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HAROLD B. WILLEY,

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 784

PETER CORRADO, also known as Pietro Corrado,
Petitioner,

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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The petitioner, Peter Corrado, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Sixth Circuit (R. 523a), affirming a judgment of the District Court for the Eastern District of Michigan denaturalizing petitioner in 1954 upon the ground that he obtained American citizenship in 1931 illegally and by fraud (R. 509a).

Opinions Below

The opinion of the Court of Appeals, set forth in the Appendix, *infra*, pp. 25-33 is reported at 227 F. 2d 780. The opinion of the District Court is set forth at pages 15-23 of the Appendix and is reported at 121 F. Supp. 75.

Jurisdiction

The judgment of the Court of Appeals was entered on December 16, 1955. By order of Mr. Justice Reed the time for filing this petition has been extended to and including April 14, 1956. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Questions Presented

1. Whether mere proof of the non-disclosure of an arrest record is clear and convincing evidence to sustain a judgment of denaturalization for fraud or illegality where the District Court specifically finds that the revelation of such arrest record at the time of naturalization would not necessarily have resulted in a denial of citizenship.

2. Whether the burden of proof in denaturalization cases described by this Court in *Klapprott* v. *United States*, 335 U.S. 601, 612 (1948) as "substantially identical with that required in criminal cases—proof beyond a reasonable doubt" was followed by the Court below which stated "it is not required that the Government in a denaturalization proceeding should meet the standard necessary for conviction in a criminal case."

3. Whether intrinsic fraud is a basis for denaturalization.

4. Whether a naturalization judgment is *res judicata* upon the issue of good moral character.

Statutes Involved

Section 1, Paragraph Fourth of the Naturalization Act of June 29, 1906 [34 Stat. 598; 8 U.S.C. 386], in force in 1931, provided in part as follows:

> "Fourth: No alien shall be admitted to citizenship unless (1) immediately preceding the date of his petition the alien has resided continuously within the United States for at least five years and within the county where the petitioner resided at the time of filing his petition for at least six months, (2) he has resided continuously within the United States from the date of his petition up to the time of his admission to citizenship, and (3) during all the periods referred to in this subdivision he has behaved as a person

of good moral character attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States."

Section 338(a) of the Nationality Act of 1940 [54 Stat. 1137, 8 U.S.C. 738(a)] provides as follows:

"It shall be the duty of the United States district attorneys for the respective districts, upon affidavits showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 701 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such persons to citizenship and cancelling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured."

Statement

Petitioner, a native of Italy, came here at the age of 17 on February 3, 1921. He is married to an American citizen and is the father of two American born children. (R. 483a).

In May of 1930 petitioner filed his preliminary form for a petition (Ex. 1) and in 1931 his petition for American citizenship (R. 322a, 323a, 478a-483a). Petitioner, who had gone no further than the third grade and could not read English very well (R. 426a), found the preliminary form for a petition "too deep" and went to a store opposite the courthouse where he was assisted in filling out the form (R. 429a-430a). Although the trial judge originally disbelieved this (R. 470a), after the parties stipulated that professional helpers maintained establishments for assistance to citizenship applicants near the Federal Building in Brooklyn in May of 1930 (R. 474a), the District Court found

that it was not unusual for these forms to be executed "at one of the stores opposite the Federal Court in Brooklyn" (R. 503a). It was further found by the District Court below that petitioner did not fill out the citizenship application (Ex. 1; R. 478a-479a) although he signed it (R. 500a).

The application contains a "no" in a handwriting not that of petitioner's, to question 29 which asks whether the applicant has ever been arrested (R. 479a). Petitioner testified that he paid a man in one of the stores opposite the Federal Court in Brooklyn to fill out the form, that he acknowledged his arrest record but was told as long as he didn't serve time, it was not necessary to list the arrest (R. 431a-432a, 503a). In fact, petitioner was arrested prior to naturalization on several occasions (R. 13a), but in no instance was he sent to jail for any offense. All but two arrests resulted in discharges or dismissals. He was fined $25.00 and $10.00 for disturbing the peace in 1923 and for frequenting a gambling place in 1927 (R. 500a-501a).

The Government charged in its amended complaint herein and at pretrial that petitioner misrepresented his arrest record to Frank L. White during his preliminary examination for citizenship and to Warren C. Young, designated examiner. It was alleged that such false answer by petitioner prevented proper investigation and "was made to induce the Immigration and Naturalization Service to make an unconditional recommendation to the Court that his petition be granted * * * and to procure naturalization in violation of law" (R. 13a-14a; 19a-20a). In support of these allegations petitioner's arrest record was introduced and Frank L. White was produced as a witness. White testified that he had no independent recollection of the petitioner or of the citizenship application in his case (R. 59a, 71a), and that he had no knowledge as to who prepared the citizenship application (R. 80a). The Court

below specifically found that White "couldn't be expected to remember examining this individual" (R. 506).

White stated that he made no recommendations to the Court and that had he known about the arrest record of petitioner he would have either recommended further investigation or "let the designated examiner take it from there on" (R. 173a, 179a-180a). What the designated examiner, Warren C. Young, would have recommended to the Court could not be established in view of the fact that he was dead (R. 177a-178a; 98a). The District Court acknowledged that what a designated examiner would have recommended herein, if he knew all the facts, depended upon the designated examiner involved (R. 98a). The Court further ruled that it wasn't necessary to prove "what would have happened if the Department knew the truth" (R. 182a).

The Government contended, and the District Court agreed that a case was established for denaturalization if it was shown that petitioner "answered one way and the truth was the other" (R. 181a). The District Court ruled that the petitioner's arrest record was material and that fraud was established although:

> "If he had revealed that he had been arrested it does not necessarily follow that he would have been denied citizenship, but this was information that the examining officers were charged by law with obtaining and to which they were entitled." (R. 504a).

The Court of Appeals affirmed, stating (R. 529a):

> "Upon analysis, the issue is not whether naturalization would have been denied appellant had he revealed his numerous arrests, but whether, by his false answers, the Government was denied the opportunity of investigating the moral character of appellant and the facts relating to his eligibility for citizenship. . . .

> Where fraud has been practiced by the alien in procuring citizenship, it is not required that the Government in a denaturalization proceeding should meet the standard necessary for conviction in a criminal case. It will suffice to show that the applicant lied concerning a material fact which, if revealed, might have prevented his acquisition of citizenship."

Reasons For Granting the Writ

The decision below establishes a new rule of law and a new standard of proof with regard to fraud, and with regard to denaturalization cases in particular. This standard is in conflict with decisions of this Court and other circuits. If it is to prevail, it will not only affect the great number of denaturalization cases now pending in the courts, but all future cases. If the Government may prevail and establish fraud in denaturalization cases by showing mere falsity as here without proof of actual deception, does it not follow that similar rulings will follow in tax cases and in other fields of governmental activity?

1. The District Court denaturalized petitioner in 1954 upon a specific ruling that it was not necessary to decide whether petitioner would have been denied citizenship in 1931 had all the facts been revealed (R. 504a). The Court of Appeals approved this ruling stating that the issue is not whether naturalization would have been denied had petitioner revealed his arrest record (R. 529a).

Prior to the decision below, the Court of Appeals for the Third Circuit observed that no decision could be found "where citizenship had been revoked for failure to disclose facts the revelation of which would have justified refusal of citizenship in the first place." *United States* v. *Kessler*, 213 F. 2d 53, 58 Note 9 (C.A. 3, 1954). The decision below is the first appellate ruling in the history of denaturalization cases authorizing revocation of citizenship without

proof of actual deception. It is in conflict with the Third Circuit's decision in *United States* v. *Kessler, supra* and *United States* v. *Anastasio*, 226 F. 2d 912 (C.A. 3, 1955), now pending upon an application for certiorari (No. 691, October, 1955, Term). In the *Anastasio* case it was said at 226 F. 2d at 916, 917, 919:

> "A denaturalization proceeding is essentially an action for rescission. As in all rescission actions, the government in order to prevail must establish that (1) the defendant was guilty of fraud or misrepresentations and (2) *it was deceived thereby.*" (Italics supplied).
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> "In a denaturalization case '. . . the facts and the law should be construed as far as is reasonably possible in favor of the citizen.'
>
> "An essential element of fraud is that the complaining party must have been deceived by the fraudulent statements of the accused. If this element is lacking the accused has failed in his purpose to defraud.
>
> "Applying these principles to the instant case it is obvious that the government has failed to establish by the strict burden of proof imposed upon it that the defendant had 'deceived' it into recommending citizenship in 1943"
>
> • • • • • • •
>
> "It must be remembered that we are here concerned not with a naturalization proceeding where a privilege is sought, but with an action to denaturalize. As such the burden lies heavily with the government to cut square corners. The Supreme Court has spoken clearly and often on the independent close scrutiny that courts should make in such proceedings."

Contrary to these decisions and contrary to the normal rule applicable to the revocation of judgments, revocation of citizenship has been decreed herein without proof of actual deception or what would have occurred in the 1931 naturalization proceedings had all the facts been known. Citizenship may not be taken away without the clearest sort of justification and proof. *Baumgartner* v. *United States,* 322 U.S. 665 (1944); *Schneiderman* v. *United States,* 320 U.S. 118 (1943); *Knauer* v. *United States,* 328 U.S. 654 (1946); *Landon* v. *Gonzales,* 350 U.S. 920 (1955). Nevertheless, the court below by sanctioning denaturalization without proof as to what the naturalization court would have done, has necessarily authorized revocation of citizenship without the clearest sort of justification and proof—without clear and convincing evidence In view of the serious consequences of denaturalization, in view of the conflict with this Court's decisions and the Third Circuit, and in view of the novel rule here enunciated for the first time by an appellate tribunal, it is submitted that a writ of certiorari should issue.

2. The scope of the novel rule of fraud announced below becomes more far reaching in view of the Circuit Court's refusal to observe the exacting standards prescribed by this Court in denaturalization cases. The Court below announced that "it is not required that the Government meet the standard necessary for conviction in a criminal case" (R. 529a). This is directly contrary to the decisions of this Court in *Klapprott* v. *United States,* 335 U. S. 601, 612 (1948), and *Baumgartner* v. *United States,* 322 U. S. 665 (1944). In the *Baumgartner* case this Court refused to permit denaturalization where the evidence "lacks that solidity of proof which leaves no troubling doubt." In the *Klapprott* case it was observed:

> ". . . because of the grave consequences incident to denaturalization proceedings, we have held that a

burden rests on the government to prove its charges in such cases by clear, unequivocal and convincing evidence which does not leave the issue in doubt. *Schneiderman* v. *United States*, 320 U. S. 118, 87 L. ed. 1796, 1819, 63 S. Ct. 1333. This burden is substantially identical with that required in criminal cases—proof beyond a reasonable doubt."

The court below has refused to follow the decisions of this Court in so vital a field as denaturalization which involves grave consequences to the individual and his family. The gravity of denaturalization consequences and the importance of applying a proper standard of proof in the many denaturalization cases now pending in the courts warrant review of the instant action by this Court.

3. In *United States* v. *Throckmorton*, 98 U. S. 61, 68 (1879), this Court said:

> "* * * that the acts for which a court of equity will on account of fraud set aside or annul a judgment or decree, between the same parties, rendered by a court of competent jurisdiction, have relation to frauds, extrinsic, or collateral, to the matter tried by the first court, and not to a fraud in the matter on which the decree was rendered."

See also: *Kibbe* v. *Benson*, 17 Wall. 625 (1874).

Thereafter, this Court noted on several occasions that naturalization had all the incidents of a regular judicial proceeding. *Tutun* v. *United States*, 270 U.S. 568, 576-578 (1925); *United States* v. *Macintosh*, 283 U.S. 605, 615 (1931); *Bindczyck* v. *Finucane*, 342 U.S. 76 (1951).

In *Knauer* v. *United States*, 328 U.S. 654 (1946), this Court modified the normal rule applicable to judgments generally and held that fraud in taking the oath of allegiance was within the reach of the denaturalization stat-

ute. The issue here involved, however, was expressly left open, for the Court stated (at 328 U.S. 670, 671):

> "We need not consider the extent to which a decree of naturalization may constitute a final determination of issues of fact, the establishment of which Congress has made conditions precedent to naturalization. Those facts relate to the past—to behavior and conduct. But the oath is in a different category."

Although some courts refuse to denaturalize for intrinsic fraud, *United States* v. *Kusche*, 56 F. Supp. 201, 217, 218 (S.D. Calif. 1944); *United States* v. *Gleeson*, 90 Fed. 778 (C.A. 2, 1898), others, like the Court below assume that this Court's decision in the *Knauer* case has removed all barriers to denaturalization for fraud whether it be designated intrinsic or extrinsic. However, we submit that denaturalization for intrinsic fraud, relating to past conduct, which is here involved, has not been approved by any Supreme Court decision. Before the serious consequence of denaturalization is authorized upon this basis, this Court should decide whether a decree of naturalization constitutes a final determination of the issue of past conduct.

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4. A judgment of naturalization is *res judicata* upon the issues of good moral character and attachment. It is clear that had petitioner been denied citizenship upon a finding that good moral character was absent, such finding would have been *res judicata*. *In re Hartman*, 232 Fed. 797 (D.C. Iowa 1916); *In re Stasinopulos*, 21 F. 2d 71 (D.C. Mich. 1927). A decree of naturalization is a judgment in the full judicial sense. In the instant case the issue of good moral character was distinctly before the naturalization court. The Designated Naturalization Examiner, Warren C. Young, now deceased, found petitioner of sufficient good moral character, and recommended approval of his application by the Court which granted him citizenship.

In *United States* v. *Moser*, 266 U.S. 236, 242 (1924), this Court said:

> ". . . a fact, question or right distinctly adjudged in the original action, cannot be disputed in a subsequent action, even though the determination was reached upon an erroneous view or an erroneous application of the law."

See also: *Tait* v. *Western Md. R. Co.*, 289 U.S. 620 (1933); *Chicot County Drainage District* v. *Baxter State Bank*, 308 U.S. 371 (1940); *Wilson Cypress Co.* v. *Atlantic Coast Line R.R. Co.*, 109 F. 2d 623 (C.A. 5, 1940), certiorari denied, 310 U.S. 653.

Applying these principles to the instant case, it is evident that relitigation of the issue of good moral character should not be permitted. The courts have frequently considered the issues settled before the naturalization court *res judicata.*

The issue of residence is within the scope of *res judicata. United States* v. *Srednik*, 19 F. 2d 71 (C.A. 3, 1927).

In *United States* v. *Pandit*, 15 F. 2d 285 (C.A. 9, 1926), certiorari denied, 273 U.S. 759, it was held that the issue of racial eligibility could not be relitigated.

Even as a finding of bad moral character cannot be relitigated (*In re Hartman, supra; In re Stasinopulos, supra*), it has been held that the finding of good moral character is settled by the decree of naturalization. *United States* v. *Bischof*, 48 F. 2d 538 (C.A. 2, 1931). In the *Bischof* case it was said with relation to the naturalization court's finding of good moral character at page 539:

> ". . . where the questions of fact are determined by the court admitting to citizenship, such findings of fact are regarded as conclusive. *United States* v. *Srednik*, 19 F. 2d 71 (C.A. 3); *United States* v. *Richmond*, 17

> F. 2d 28 (C.A. 3). The remedy of the government, if it feels aggrieved by the decision on such findings of fact, is by appeal. . . . The question of fact determined by the state Supreme Court in favor of the applicant formed no basis for the claim of fraudulent or illegal means used in obtaining the certificate. The government having appeared and contested the one issue before the court, it is concluded by that decision on the question of fact thus presented."

The decision below, however, is in conflict with these views.

The same public policy of expediency, justice and public tranquility which produced the doctrine of *res judicata* in the legal systems of civilized nations and in our legal jurisprudence, calls for the application of *res judicata* in denaturalization cases, particularly here where it is sought to roll back the clock more than twenty years. Accordingly, the Government should be precluded from now contesting the issue of good moral character, and there should be no basis herein for a finding of fraud or illegal procurement.

Conclusion

Because of the importance of the problem presented herein, the grave consequences of denaturalization, the conflicts between the decision below and this Court's decisions as well as that of other circuits, it is respectfully submitted that a writ of certiorari should issue.

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Opinion of the United States District Court for the Eastern District of Michigan

(Filed April 30, 1954)

This is an action to cancel citizenship of defendant on the grounds of both fraud and illegality, brought under Section 338(a) of the Nationality Act of 1940, 54 Stat. 1158. Proof of either charge will suffice.

Defendant acquired his citizenship under the Act of June 29, 1906 (34 Stat. 596) as amended by Act of March 2, 1929, Chap. 536, Sec. 6(b) (45 Stat. 1513), which provides in part, subsection "Fourth" (3):

> "Fourth. No alien shall be admitted to citizenship unless * * * and (3) during all the periods referred to in this subdivision he has behaved as a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States."

This requirement remains unchanged in the current Act, 8 USC 1427(a).

Findings of Fact

The facts are these:

Defendant came to America in the year 1921, shortly after the first world war and soon took up his home in Detroit. In 1929, he moved to Brooklyn, New York, and on or about May 18th, 1931, made application for citizenship. He also appeared before a preliminary examiner to be interrogated concerning the statements made by him on his application. One of the questions on that application was:

> "have you ever been arrested or charged with violation of any law of the United States or State or any city ordinance or traffic regulation?"

Defendant's answer to this question was "No." While the handwriting in the main body of the application was clearly not defendant's, the application was signed by him. To show that this answer to the quoted question was false, the government has proven that beginning with June 25, 1923, up to and including the day he was naturalized on August 18, 1931, defendant had been arrested at least fifteen times and convicted of two misdemeanors—disturbing the peace on June 25, 1923, and frequenting a gambling place on August 3, 1927.

Shortly after defendant became an American citizen he returned to Detroit, where he has resided ever since.

On July 19, 1946, defendant through an attorney, asked the Superintendent of Police in Detroit to remove his record except for the two misdemeanors, since "no convictions occurred subsequent to" the other arrests. This was as provided by Michigan Statute, CL 1929, Sec. 569 (MSA Sec. 4, 463).

Following is the list of arrests and their dispositions, which occurred prior to and during 1931, as submitted by defendant's then attorney to the Detroit Police Department Superintendent at the time defendant's record was expunged:

6/25/23	Disc. peace	$25.00 or 30 days Heston
3/24/24	Fel. asslt.	Dismissed
1/16/25	Viol. Dyer Act	TOT. U. S. Marshal
8/ 6/25	R. A.	Dismissed
3/30/26	C. C. weapons	Discharged
4/13/27	CCW Capias	Discharged
8/ 2/27	Freq. Gamb. pl	$10.00 or 10 days
2/19/29	Murder	Discharged
3/15/29	U. S. Immigration	Discharged
10/28/31	Murder	Nolle Prossed
12/10/31	Fugitive	TOT. Wyandotte, Mich PD

Not included in the above list are the following arrests, which were proved by the government at the trial:

3/13/24	Murder	Dismissed on writ 3/15/24
7/26/24	Robbery Armed	Dismissed by Super. 7/29/24
9/25/24	Robbery Armed	Dismissed by Super. 9/26/24
11/ 7/24	Arrested on Investigation—Released on bail—bail forfeited—no disposition	
1/13/25	Robbery Armed	Dismissed by Super. 1/16/25
4/26/25	Robbery Armed	Dismissed by Super. 4/28/25

It will be noted that the first nine charges listed by defendant at the time he expunged his record include felonious assault, violation of the Dyer Act, robbery armed, carrying concealed weapons, murder and violation of the immigration laws. Defendant was also finger-printed. The arrests not so listed by defendant include murder and robbery armed and the arrest on "investigation" on November 7, 1924, was in Rochester, New York. At the trial defendant admitted being arrested in Rochester, New York and posting bond—"And I haven't heard from it since."

The robbery armed charge of August 6, 1925, was in Detroit, and was not dismissed until September. In this matter defendant put up bond and as he had done before hired a prominent attorney to represent him.

The arrest for murder in February, 1929, terminated the same day. The one on March 13, 1924, was dismissed on writ March 15, 1924.

During the course of the trial the government also sought to prove other arrests taking place subsequent to the date of naturalization under *Luria* v. *U. S.* 231 U. S. 9; *U. S. ex rel. Harrington* v. *Schlotfeldt,* 136 F. 2d 935; *Baumgartner* v. *U. S.,* 138 F. 2d 29 (reversed by the Supreme Court, 322 U. S. 665 on other ground); and *Turlej* v. *U. S.* 31 F. 2d 696. However, this court, on objection by defendant, refused to permit any evidence concerning defendant's alleged improper actions after his naturalization, except to show that on March 9, 1931, while his application for citizenship was pending in Brooklyn and before he was naturalized, an indictment for murder had been returned against him in Detroit and also that he was charged as a

fugitive from justice on October 10, 1931. The indictment was for the same murder for which defendant was arrested on February 19, 1929 before going to New York to live. This indictment was the basis for arrest for murder on October 28, 1931, after defendant was naturalized and had returned to Detroit. He was placed on $10,000.00 bond for this charge, but the case was nolle prossed January 20, 1932.

There is no question or doubt in this court's mind but that defendant had been arrested several times when he made his application for United States citizenship. As a matter of fact, defendant admitted the two arrests followed by convictions and also some of the other arrests at trial. He did not deny the others, but was very vague and stated that he "did not remember" them. He was also identified in many of the charged arrests by several police officers as the man they had arrested. The proof as to each of these arrests is "clear, convincing and unequivocal." *Schneiderman* v. *U. S.*, 320 U. S. 118. Other findings of fact are commingled with the conclusions of law.

Conclusions of Law

The first question relates to the alleged fraud. Did the defendant intentionally make any false statements? It is his position that he made out his application for citizenship at one of the store offices opposite the Federal Court in Brooklyn, which, of course, would not be unusual. He further stated that he told the person who made out his application all about his arrests, but that this person informed him that nevertheless his answer to the question should be "no." Defendant testified:

> "So he asked, was I ever arrested. I say 'yes'.
>
> So he told me, 'For what?'
>
> So I told him, I said, 'I was arrested for investigation, and I pay a fine of $25, fine for disturbing the peace.'

So he told me, he said, 'Well, that is $25 fine for disturbing the peace. That is nothing. That is a misdemeanor.'

He said, 'The others—did you ever serve time for anything'?

I said, 'No.'

Well, he said 'That is all. As long as you didn't serve no time, that is not necessary.' "

It is defendant's position that he failed to answer the question truthfully because the man who helped him fill out his application informed him that if he didn't serve time the arrest didn't count. This court does not believe that latter statement. On the contrary, we believe that he deliberately falsified his position with the intent of misleading the examiner, and that such false statements were material to the issue, because under the numerous authorities, *Knauer* v. *United States*, 328 U. S. 654; *Del Guercio* v. *Pupko*, 160 F. 2d 799; *U. S.* v. *DeFrancis*, 50 F. 2d 497; *U. S.* v. *Saracino*, 43 F. 2d 76; *U. S.* v. *Charnowola*, 109 F. Supp. 810 and also the rules and regulations in force at the time defendant was examined governing interrogation by the examiner, which provides in part:

"The question of possible arrests must be thoroughly covered. If the applicant has been arrested or charged with a violation of any law or ordinance all the facts will be ascertained including information as to whether conviction resulted."

An applicant for citizenship must present all of the facts and have no guilt or fraud in his heart. He must, to use a common expression, "come clean." See *U. S.* v. *Zgrebec*, 38 F. Supp. 127.

In *Knauer* v. *United States*, *supra*, fraud is defined as connoting "perjury, falsification, concealment, misrepresentation." Certainly this defendant concealed the fact

that he had been arrested. He "falsified" and "misrepresented" and was also probably guilty of perjury. *Gaglione* v. *U. S.* 35 F. 2d 496. If he had revealed that he had been arrested it does not necessarily follow that he would have been denied citizenship, but this was information that the examining officers were charged by law with obtaining and to which they were entitled. The seriousness of the offense and the materiality of any arrest or conviction would be then up to the examining officers, and if they wrongfully refused petitioner naturalization he could then appeal to the courts.

We also hold and find that the government examiner relied upon defendant's misrepresentations.

It seems to be the position of defendant that his false statement was immaterial, but when we follow the reasoning of the court in *Del Guercio* v. *Pupko, supra,* to its logical conclusion, we must hold that it was very material. True, the Del Guercio case was an application for citizenship where the burden of proof is admittedly different than in a de-naturalization action, but it involved an identical type of misrepresentation as in the case at bar and the court held that where the petitioner, in his application for citizenship, had falsely denied being arrested or charged with violations of any law, that such false statement of itself involved "moral turpitude and exhibits the unfitness of the applicant for the high privilege of citizenship." A fortiori, if an applicant is refused citizenship because the government caught him in making a false statement in his application for citizenship, should any naturalized person be permitted to keep his citizenship as a reward for having been successful in his deceit? We cannot follow that kind of reasoning. Since the information concealed was asked, and a truthful answer might possibly have prevented defendant from obtaining his citizenship in the first instance, the misrepresentation was clearly material.

The preliminary examiner who had interrogated defendant concerning the answers he had given in his written application for citizenship was a witness at the trial. He identified certain writing and marks on defendant's application having been made by witness. He testified that the check marks which appeared on the application next to several of the questions, including the question about arrests, meant that he had questioned the applicant sufficiently to determine that the applicant had answered the written questions the way he wanted to answer them; that he had questioned the applicant as to the questions asked on the application, in addition to supplementary questions to clarify any given situation in the application. This witness also identified his writing of the letters "NCR" and "RE" on the back of the application and testified that these notations meant "No Criminal Record" and "Reads English" respectively.

Stress is placed by defendant on whether or not this witness' testimony was sufficient since he evidently did not remember Mr. Corrado personally. Mr. White, the preliminary examiner, examined defendant back in 1931, and has not been connected with the government since 1933. He couldn't be expected to remember examining this individual. If he had said that he actually did remember this particular person we doubt very much if the court would have believed him without some exceptional proof as to why, out of the thousands of petitioners he had examined as examiner, he was able to remember this one. The strength of White's testimony lies in the fact that he just testified to things he did remember.

We are also confronted with the following well settled law:

Under the 1929 regulations pre-petition examinations had to be under oath, *United States* v. *Obermeier*, 186 F. 2d

243 and the examiner obliged to check the answers by inquiry. In the absence of any proof to the contrary there is a strong assumption that public officials have properly discharged their duties. *Lewis* v. *United States*, 279 U. S. 63; *Stone ex rel. Colonna* v. *Tillinghast*, 32 F. 2d 447; *Daskaloff* v. *Zurbrick*, 103 F. 2d 579. Defendant himself testified that if he was not mistaken he believed he was made to swear—made to raise his hand. Hence we are forced to conclude that White asked him the necessary questions concerning the answers on defendant's petition and that defendant carried on the deceit.

We hold that defendant was guilty of fraud and we further hold that he would and should be deprived of his citizenship for having obtained it illegally. His very act in falsifying the facts indicates that at the time he did so he was not "a person of good moral character" or "well disposed to the good order and happiness of the United States." *Stevens* v. *United States*, 190 F. 2d 880; *United States* v. *Etheridge*, 41 F. 2d 762; *Del Guercio* v. *Pupko*, *supra*. See *United States* v. *Accardo*, 113 F. Supp. 783, wherein the court said:

> "How can a person claim to be of 'good moral character' or 'well disposed to the good order and happiness of the United States' at the very time he is seeking to defraud the United States, in a matter of moment both to him and to the country?"

The decision of the District Judge was adopted by the Court of Appeals, Third Circuit, in a per curiam decision, 208 F. 2d 632.

We are loath to take away the citizenship of anyone but in this case there are several reasons why this court has no faith in the testimony given by defendant except that he probably did have someone else make out the application for him. We disbelieve him because:

(a) His demeanor and evasion while on the witness stand did not impress us;

(b) Even after the letter from his then attorney to the Detroit Police Superintendent asking that certain records be expunged, had been introduced defendant did not admit nor deny some of those arrests, but said from the witness stand that he "didn't remember"; and he took the same position regarding some of the arrests not listed in that letter; (This was his attitude regarding the March 13, 1924 arrest for murder, and we think it altogether improbable that one would not remember such an arrest.)

(c) The defendant was not an "ignorant foreigner"—an impression sought to be created;

(d) His shifting of his residence to New York came about the same time as the murder for which he was indicted in Detroit in 1931; and

(e) Adding two and two together it is apparent to this court from his own testimony that defendant went to New York to make his application for citizenship because of his long police record in Detroit.

For the above reasons we hold that the government has proven its case and that defendant's citizenship should be revoked on both the grounds of fraud and illegality.

(S.) Frank A. Picard,
United States District Judge.

Dated: April 30, 1953.

Judgment

At a session of said Court held in the Federal Building, at Detroit, Michigan, this 10th day of May, 1954

Present: The Honorable Frank A. Picard United States District Judge

Upon the records and files of the above action from which it appears that the summons and complaint have been duly

served upon the defendant above named, and from a full hearing in open court, and in accordance with an opinion filed on April 30, 1954, in which the Court held that the defendant procured his naturalization fraudulently and illegally, and upon motion of Fred W. Kaess, United States Attorney, by Dwight K. Hamborsky, Assistant United States Attorney, in and for the Eastern District of Michigan, Southern Division.

It is hereby ordered, adjudged, and decreed that the order of the United States District Court of the Eastern District of New York, at Brooklyn, New York, entered on August 18, 1931, admitting the defendant Pietro Corrado as a citizen of the United States of America, be and the same is hereby revoked, set aside, and declared void, and that the Certificate of Naturalization issued by virtue of said order of August 18, 1931, be and the same is hereby cancelled and declared null and void; and

It is further ordered, adjudged and decreed that the defendant shall deliver and surrender to the Clerk of the United States District Court for the Eastern District of Michigan the original Certificate of Naturalization of the defendant.

It is further ordered, adjudged, and decreed that the Clerk of this Court transmit to the Attorney General, Department of Justice, Washington, D. C., a certified copy of the judgment, order and decree, together with the original Certificate of Naturalization of the defendant, if in his possession; and

It is further ordered, adjudged, and decreed that the defendant Pietro Corrado be and he is hereby forever restrained and enjoined from setting up or claiming any rights, privileges, benefits, or advantages whatsoever under said order of August 18, 1931, or under the Certificate of Naturalization issued by virtue of said order.

It is further ordered, adjudged, and decreed that the

Clerk of this Court shall also transmit a certified copy of this order to the Clerk of the United States District Court for the Eastern District of New York at Brooklyn, New York.

(S.) FRANK A. PICARD,
United States District Judge.

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 12349

PETER CORRADO, a/k/a Pietro Corrado, *Appellant*

v.

UNITED STATES OF AMERICA, *Appellee*

Appeal from the United States District Court for the Eastern District of Michigan
Decided December 16, 1955

Before Simons, Chief Judge; Martin and McAllister, Circuit Judges

MARTIN, *Circuit Judge:*

Appellant became a naturalized citizen of the United States by an order of the United States District Court for the Eastern District of New York, entered on August 18, 1931. This is an appeal from the judgment of the United

States District Court for the Eastern District of Michigan, revoking the order entered in the Eastern District of New York and canceling the certificate of naturalization issued pursuant to it. Appellant's citizenship was canceled because of fraud and illegality in its procurement.

Appellant, an Italian, came to the United States in 1921 and soon thereafter became a resident of Detroit, Michigan. On December 29, 1927, at Detroit, he declared his intention to become an American citizen. In June of 1929, he moved to Brooklyn, New York; and, on or about May 18, 1931, he applied for citizenship by petition to the United States District Court at Brooklyn, New York. On the printed application furnished him were numerous questions. This application shows that, after the question numbered 29: "Have you ever been arrested or charged with violation of any law of the United States or State or any city ordinance or traffic regulation?" was written the word "no". The application was signed by appellant above a printed certification that the statements in it were true to the best of the knowledge and belief of the applicant. The answers in writing to the questions asked in the application were not in the handwriting of appellant, but the application was signed by him.

The answer to the quoted question was false, for it was shown at the trial that, from June 25, 1923, to August 18, 1931 (the date of his naturalization), appellant had been arrested at least fifteen times and had been convicted of two misdemeanors: disturbing the peace in 1923; and frequenting a gambling place in August of 1927.

Very soon after his naturalization, Corrado returned and became a permanent resident of Detroit. Pursuant to his right under Michigan law, he formally requested the Superintendent of Police in Detroit to expunge from his record the list of his arrests, with the exception of the two misdemeanors upon which he was convicted, inasmuch

as he had not been convicted on any other charge for which he had been arrested. The attorney for appellant submitted to the Police Superintendent a record of nine arrests which, upon application, were expunged. These arrests included one for murder, which was discharged; another, two years later, for murder, which was nolle prossed; other arrests were upon charges of felonious assault; armed robbery; concealed weapons (two arrests); violation of the Dyer Act; violation of United States Immigration laws; and he had also been arrested as a fugitive from justice.

The trial judge listed six additional arrests, which had not been expunged. These arrests were established by the Government, by evidence introduced at the trial: one for murder; four for armed robbery; and one "on investigation." The United States District Court rejected the Government's offer to prove other arrests subsequent to the date of appellant's naturalization, and denied the admission of any evidence concerning his alleged improper actions after naturalization, with two exceptions. Evidence was admitted to the effect that, while his application for citizenship was pending in Brooklyn and before it was granted, an indictment had been returned against him in Detroit wherein he was charged with the same murder for which he had been arrested on February 19, 1929, before he left Detroit to live in New York. The Government was also permitted to show that, on October 10, 1931, appellant was charged with being a fugitive from justice.

In relation to his false answer to the question as to whether he had ever been arrested, Corrado made the excuse—which was not accepted by the trial judge—that the person who filled out his application in a store office opposite the Federal Building in Brooklyn had informed him that, because he had been convicted only for misdemeanors and his other arrests had not resulted in convictions, it was proper that he should answer "no" to

the question of whether or not he had ever been arrested.

The trial judge, in his opinion holding that appellant was guilty of fraud in the procurement of his citizenship, stated that he did not believe the testimony of appellant for numerous reasons, namely: his demeanor and evasion on the witness stand; his convenient memory; his obvious intelligence instead of feigned ignorance; his shifting of residence from Detroit to New York around the time of his indictment for murder at Detroit; and his making of application for citizenship in New York, evidently because of his long police record in Detroit.

We have in mind the fact that, at the time of appellant's examination in New York, the preliminary examiner had noted upon the back of the application that it was being referred to Detroit for the taking of depositions with respect to appellant during the years from March 1, 1926, to June 14, 1929, a period of more than three years, during which he had resided in Detroit immediately before going to Brooklyn, New York, at which place he had resided for a year before filing his application for citizenship. While it appears that depositions were later taken in Detroit for that period, there is no evidence in the case as to what these depositions contained.

The preliminary examiner who had questioned appellant concerning the answers in his application for citizenship testified at the trial. The purport of his testimony was that his check marks on the application indicated that Corrado had answered the questions as he desired to answer them. The examiner pointed out that the letters "NCR" which he had placed on the back of the application meant "no criminal record"; and that the letters "RE" meant "reads English." The trial judge indicated strongly that he believed the testimony of the preliminary examiner. The opinion of the trial judge on the credibility of witnesses is, of course, not reviewable on appeal.

The brunt of appellant's complaints on this appeal is that, unless the Government could show that he would have been denied citizenship on the unproven charges made in the warrants of arrest, his citizenship should not be canceled now for his deception in the statement that he had never been arrested, especially in view of the fact that his only convictions were for misdemeanors, or minor offenses. He throws in the proposition that fraudulent procurement of naturalization must be established by clear and convincing evidence, which, he says, has not been done in this case. *Baumgartner* v. *United States*, 322 U. S. 665; *Schneiderman* v. *United States*, 320 U. S. 118, 125; *Knauer* v. *United States*, 328 U. S. 654. Appellant stresses as authority *United States* v. *Kessler*, 213 F. (2d) 53 (C. A. 3), wherein it was held that an applicant's denial in her petition for naturalization that she had ever been arrested was not ground for cancellation of her naturalization certificate, where the Government stated that she had been arrested 17 times. The facts were, however, that all seventeen of her arrests had been illegal and invalid, inasmuch as the activity for which she was arrested consisted merely of peaceful picketing. She stated that she had answered "no" to the question concerning her arrests for the reason that she had committed no crime, had done nothing wrong, had no intention of lying; and that she did not understand the purport of the question at the time she answered it. The *Kessler* case presented a very different situation on the whole from that in the case at bar, where appellant had been charged with such grave offenses as murder and armed robbery. He could not reasonably have thought that the Government would not be interested in investigating the facts concerning such arrests.

A later case from the Third Circuit, *United States* v. *Anastasio*, — F. (2d) — (C. A. 3), decided September 19, 1955, and cited by appellant, is not in point for the reason

that, there, as conceded by appellant in its supplemental brief, the Government was fully aware of appellant Anastasio's arrest record prior to his naturalization. In an earlier case, *United States* v. *Saracino*, 43 F. (2d) 76 (C. A. 3), the Court of Appeals for the Third Circuit reversed the United States District Judge for refusing to cancel a certificate of naturalization, where the applicant had denied that he had been arrested and convicted for assault and battery with intent to kill, prior to his naturalization. The court directed that the naturalization certificate be canceled for the fraud of the applicant.

In *United States* v. *Accardo*, 113 F. Supp. 783 (D. C. N. J.), the United States District Court revoked naturalization, for the reason that false statements and concealment of material facts by the alien in relation to his criminal record justified revocation of his naturalization, on the ground of fraud, or on the ground that the order and certificate of naturalization were illegally procured. The United States Court of Appeals affirmed on the "very full and thoroughly considered opinion of the district judge." *United States* v. *Accardo* [Dec. 7, 1953], 208 F. (2d) 632 (C. A. 3).

Denaturalization for fraud and illegality in the procurement of citizenship is provided for in section 338(a) of the Nationality Act of 1940. Admittedly, a high standard of proof is required of the Government in a denaturalization case. To successfully attack a naturalization judgment, fraud upon the part of the naturalized citizen in procuring his naturalization must be proved by clear and convincing evidence. In *Knauer* v. *United States*, 328 U. S. 654, it is made plain that an appellate court must observe Civil Procedure Rule 52(a), which requires that due regard be given to the determination by the trial judge of the credibility of witnesses. The trial judge here stated clearly that he did not believe the testimony of appellant. He stated his belief

to be that appellant "deliberately falsified his position with the intent of misleading the examiner"; and that these false statements were material to the issue. The trial judge expressly found that the Government had relied upon the appellant's misrepresentation concerning the material matter of his arrests.

Upon analysis, the issue is not whether naturalization would have been denied appellant had he revealed his numerous arrests, but whether, by his false answers, the Government was denied the opportunity of investigating the moral character of appellant and the facts relating to his eligibility for citizenship. How could any Government official or witness say whether or not citizenship would have been denied appellant from an investigation of the various causes of his arrest, when no opportunity for investigation was afforded? His false statement upon the material matter in actuality caused no investigation to be made. To be awarded citizenship in the United States exacts the highest standard of rectitude. Our Government should be afforded full opportunity for investigation of the moral character and fitness of an alien who seeks to be vested with all the rights, privileges and immunities of a natural born citizen of the United States. Where fraud has been practiced by the alien in procuring citizenship, it is not required that the Government in a denaturalization proceeding should meet the standard necessary for conviction in a criminal case. It will suffice to show that the applicant lied concerning a material fact which, if revealed, might have prevented his acquisition of citizenship.

In three denaturalization proceedings, heard together on appeal to this court from the Eastern District of Michigan, we affirmed the respective judgments of District Judges Levin, Thornton and Picard: all revoking naturalization. *Sweet* v. *United States*, *Chomiak* v. *United States*, and *Charnowola* v. *United States*, 211 F. (2d) 118 (C. A. 6). In

the *Sweet* case, Judge Levin said that the "testimony left no doubt that the defendant had concealed his history of Communist Party membership from the naturalization authorities and had thereby thwarted inquiry into his eligibility for naturalization." In the *Chomiak* case, Judge Thornton found convincing evidence that the denaturalized defendant had been a member of the Communist Party and, therefore, ineligible for citizenship; and that the defendant had procured his naturalization illegally. In the *Charnowols* case, Judge Picard found that the defendant in naturalization proceedings had not truthfully answered the question asked by the examiner as to whether he had ever been a Communist and, therefore, had obtained citizenship by fraud. This court stated in its per curiam opinion that the findings of fact of the judge in each of the cases were supported by substantial evidence and were certainly not clearly erroneous; and that the conclusions of law in each case were based upon logically correct reasoning, supported by highest authority.

In *United States* v. *Smith*, 62 F. (2d) 808, 812 (C. A. 7), where *habeas corpus* was denied in a deportation proceeding, Judge Evan Evans said: "What the officer would have discovered, or might have discovered, had the inspection not been thwarted is beside the question. The inspection contemplated was defeated. In legal effect there was no inspection." The same reasoning applies here.

In *Stevens* v. *United States*, 190 F. (2d) 880, 881 (C. A. 7), Chief Judge Major said: "We have no doubt but that a false statement knowingly made by an applicant for naturalization in the course of such proceeding would afford a proper basis for denying the application, and it is immaterial that the false statement knowingly made concerned violations which occurred previous to the five year period." Cf. *United States* v. *Etheridge*, 41 F. (2d) 762 (D. C. Ore.).

Upon the facts revealed in the record, heretofore outlined, and upon the basis of the foregoing reasoning and authorities, the judgment of the United States Dsitrict Court is affirmed.

Judgment

(Filed December 16, 1955)

Appeal from the District Court of the United States for the Eastern District of Michigan.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

(7676-0)

COUNTER-STATEMENT OF QUESTIONS INVOLVED

The Appellee accepts the statement of the questions set forth in Appellant's brief except as to Question I.

Counter-Question I

WAS FRAUDULENT PROCUREMENT OF NATURALIZATION ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE?

The Court below answered "Yes".

The Appellee contends the answer should be "Yes".

The Appellant contends that the answer should be "No".

Question II.

IS INTRISIC FRAUD A BASIS FOR DENATURALIZATION?

The Court below answered "Yes".

The Appellee contends that the answer should be "Yes".

The Appellant contends that the answer should be "No".

QUESTION III.

WAS ILLEGAL PROCUREMENT OF NATURALIZATION ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE?

The Court below answered "Yes".

The Appellee contends that the answer should be "Yes".

The Appellant contends that the answer should be "No".

QUESTION IV.

WAS THE NATURALIZATION JUDGMENT RES JUDICATA?

The Court below answered "No".

The Appellee contends that the answer should be "No".

The Appellant contends that the answer should be "Yes".

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IN THE

United States Court of Appeals for the Sixth Circuit

No. 12,349

PIETRO CORRADO, a/k/a Peter Corrado,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

BRIEF OF THE UNITED STATES OF AMERICA, PLAINTIFF AND APPELLEE

COUNTER-STATEMENT OF FACTS

(Figures in parentheses followed by the letter a refer to pages of Appellant's printed appendix)

The Appellee, the United States of America, believes a counter-statement of facts is necessary.

Appellee filed its Complaint on November 28, 1952, under and pursuant to Section 338(a) of the Nationality

Act of 1940, (8 U. S. C. 738(a); Appellant's Brief, page 6), which provides for the revocation and setting aside of the order admitting a person to citizenship and cancelling the Certificate of Naturalization on the ground of fraud or illegality. (The Nationality Act of 1940 was repealed by Section 403(a)(42) of the Immigration and Nationality Act (66 Stat. 280), but any proceedings existing at the time of the effective date of the Act (December 24, 1952) was continued in force and effect by the saving clause of the Act—Section 405(a)).

The Government charged in its Complaint that the order admitting appellant to citizenship and his Certificate of Naturalization should be set aside for:

1. Fraud: In that appellant wilfully and fraudulently made false representations during the course of his naturalization proceedings, concealing material facts, to wit: his record of arrests; and thereby precluding proper examination and investigation into his qualifications for citizenship;

2. (a) Illegality: In that appellant's naturalization was procured in violation of the Fourth Subdivision of Section 4 of the Act of June 29, 1906, Chapter 3592, as amended by Section 6(b) of the Act of March 2, 1929, Chapter 536 (45 Stat. 1513; Appellant's Brief, page 5), in that he was not a person who had during the five years preceding the filing of his petition for citizenship behaved as a man of good moral character, inasmuch as he made the false statements heretofore referred to, concealing from the Naturalization Examiner and the Court his record of arrests, and thereby precluding examination into his qualifications as a person of good moral character;

(b) Illegality: In that appellant's naturalization procured in violation of the Fourth Subdivision of Section 4 of the Act of June 29, 1906, as amended by the Act of

March 2, 1929, in that he was not a person who had been, during the five years preceding the date of his petition for citizenship, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States.

The appellant, Pietro Corrado, was naturalized in the United States District Court in the Eastern District of New York, Brooklyn, New York, on August 18, 1931. The appellee charged in its complaint that the appellant during his naturalization proceedings made false statements and concealed from naturalization officials and the Naturalization Court, that he had been arrested or charged with violations of law (4a). Evidence at the denaturalization trial disclosed that appellant's Application for a Certificate of Arrival and Preliminary Form for Petition for Citizenship (Exhibit 1; 479a), signed by him, contained the answer "*No*" to question 29, "Have you ever been arrested or charged with violation of any law of the United States or State or any city ordinance or traffic regulation?" Subsequently, during preliminary examination on May 18, 1931, before Naturalization Examiner Frank L. White, he was interrogated about this and other questions on said Preliminary Form (63a-66a) and the questions were checked by the Naturalization Examiner with a check mark (64a). Naturalization Examiner White testified that he reviewed each question with the appellant, an applicant for citizenship, "in order to find out whether or not he had answered it correctly, and to make any necessary changes, and the check mark indicated that he, in his answer to me, said the answer was correct as written in the application" (64a-65a).

Naturalization Examiner White further testified that the symbol "N. C. R.", in his handwriting on the reverse side of the triplicate copy of appellant's petition for naturalization (Exhibit 2; 484a) was the abbreviation for "No

criminal record" and meant that appellant had informed him that he had no criminal record (67a, 77a); that the Naturalization Examiner was concerned with appellant's arrest record, if any, because an arrest record, if one existed, would "cast a shadow" on the applicant's good moral character (85a), and to otherwise determine his qualifications for citizenship (65a).

Through a series of witnesses and documents it was established that appellant was arrested several times prior to and during the year 1931. The lower court, in its findings of fact, made the following statements concerning appellant's criminal record (500a-501a):

> "On July 19, 1946, defendant, through an attorney, asked the Superintendent of Police in Detroit to remove his record except for the two misdemeanors, since 'no convictions occurred subsequent to' the other arrests. This was as provided by Michigan Statute, C. L. 1929, Sec. 569 (M. S. A. Sec. 4.463).
>
> "Following is the list of arrests and their dispositions, which occurred prior to and during 1931, as submitted by defendant's attorney to the Detroit Police Department Superintendent at the time defendant's record was expunged:

"6/25/23	Dis. peace	$25.00 or 30 days Heston
3/24/24	Fel. asslt.	Dismissed
1/16/25	Viol. Dyer Act	TOT. U. S. Marshal
8/6/25	R. A.	Dismissed
3/30/26	C. C. weapons	Discharged
4/13/27	CCW Capias	Discharged
8/2/27	Freq. Gamb. Pl.	$10.00 or 10 days
2/19/29	Murder	Discharged
3/15/29	U. S. Immigration	Discharged
10/28/31	Murder	Nolle Prossed
12/10/31	Fugitive	TOT. Wyandotte, Mich. PD.

Not included in the above list are the following arrests, which were proved by the government at the trial:

3/13/24	Murder	Dismissed on writ 3/15/24
7/26/24	Robbery Armed	Dismissed by Super. 7/29/24
9/25/24	Robbery Armed	Dismissed by Super. 9/26/24
11/7/24	Arrested on Investigation	Released on bail—bail forfeited —no disposition
1/13/25	Robbery Armed	Dismissed by Super. 1/16/25
4/26/25	Robbery Armed	Dismissed by Super. 4/28/25

"It will be noted that the first nine charges listed by defendant at the time he expunged his record include felonious assault, violation of the Dyer Act, robbery armed, carrying concealed weapons, murder and violation of the immigration laws. Defendant was also finger-printed. The arrests not so listed by defendant include murder and robbery armed and the arrest on 'investigation' on November 7, 1924, was in Rochester, New York. At the trial defendant admitted being arrested in Rochester, New York and posting bond—'And I haven't heard from it since.'

"The robbery armed charge of August 6, 1925, was in Detroit, and was not dismissed until September. In this matter defendant put up bond and as he had done before hired a prominent attorney to represent him.

"The arrest for murder in February, 1929, terminated the same day. The one on March 13, 1924, was dismissed on writ March 15, 1924.

"During the course of the trial the government also sought to prove other arrests taking place subsequent to the date of naturalization under *Luria v. U. S.*, 231 U. S. 9; *U. S. ex rel. Harrington v. Schlot-*

feldt, 136 F. 2d 935; *Baumgartner v. U. S.*, 138 F. 2d 29 (reversed by the Supreme Court, 322 U. S. 665 on other ground); and *Turlej v. U. S.*, 31 F. 2d 696. However, this court, on objection by defendant, refused to permit any evidence concerning defendant's alleged improper actions after his naturalization, except to show that on March 9, 1931, while his application for citizenship was pending in Brooklyn and before he was naturalized, an indictment for murder had been returned against him in Detroit and also that he was charged as a fugitive from justice on October 10, 1931. The indictment was for the same murder for which defendant was arrested on February 19, 1929 before going to New York to live. This indictment was the basis for arrest for murder on October 28, 1931, after defendant was naturalized and had returned to Detroit. He was placed on $10,000.00 bond for this charge, but the case was nolle prossed January 20, 1932."

The court's findings as to appellant's arrests and convictions are not disputed by appellant in this appeal.

After receipt of all evidence, including testimony by the appellant, the court held that appellant's citizenship had been fraudulently and illegally procured. The court in its findings of fact found that appellant, since his arrival in the United States in 1921 to and including 1931, had been arrested seventeen times, including two convictions (500a-501a). As a conclusion of law, the court found that appellant deliberately made false statements when he stated in his Application for Certificate of Arrival and Preliminary Form for Petition for Citizenship (hereinafter referred to as Preliminary Form) that he had never been arrested or charged with violation of any law, and that he also repeated this falsification to the Naturalization Examiner (503a-504a). The court held that the false statements were material misrepresentations (504a). The

court further declared that it disbelieved appellant because of his evasiveness while on the witness stand and his repetitious "I don't remember" in answers to questions about his arrests (507a). The court also pointed out that appellant was not the "ignorant foreigner", an impression he sought to impose upon the court (507a).

Appellant, in his brief, has tried to make much of the fact that the trial judge originally disbelieved that there were stores opposite the Federal Court in Brooklyn where applicants for citizenship could go to obtain assistance in the preparation of their naturalization papers (Appellant's brief pages 2 and 17). At a hearing on a motion of appellant to reopen proofs held on Monday, February 8, 1954, the court points out that what he meant, when he said he disbelieved the appellant, was not as to the places across from the court house in Brooklyn but appellant's story that he told a man at one of these places about his arrests and for some unknown reason the man did not put it down. The court talked about the "mysterious stanger" and stated:

> "That seemed so farfetched to me that I told him that I did not believe his story."

Continuing, the court had this further to say:

> "When he (attorney for appellant) says that the court intimated he did not believe the defendant he was putting it mildly. I told him I did not believe him, just as strongly as I could." (Parenthetical insertion added.) (Appellee's Appendix 2b.)

The transcript of the proceedings on a motion to reopen proofs held February 8, 1954, are included in Appellee's Appendix.

ARGUMENT

(The appellee in this brief will follow the outline adopted in appellant's brief, repeating the principal subheadings contained in that brief and referring to the issues as raised by each subheading.)

COUNTER-QUESTION I

WAS FRAUDULENT PROCUREMENT OF NATURALIZATION ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE?

The Court below answered "Yes".
The Appellee contends the answer should be "Yes".
The Appellant contends that the answer should be "No".

A. Scope of Review on Appeal, Character of Burden of Proof.

The Government recognizes that cancellation of naturalization is a serious matter, but fraud once proven by "clear, convincing, and unequivocal evidence" is also a serious business.

The Courts, once fraud or illegality has been proven by clear, convincing, and unequivocal evidence, have shown no reluctance in cancelling citizenship. Congress has provided, in Section 338(a) of the Nationality Act of 1940, for denaturalization on the ground of fraud and illegality. That provision was created to provide added protection for fraud committed against the United States Courts. (*Knauer v. U. S.*, 328 U. S. 654, 672-3.)

Appellant in his brief, page 9, states that in denaturalization cases, findings by the lower court do not have the same weight as in other civil cases. This is true only in the sense that such findings are not conclusive and may be reviewed by the appellate court to determine whether

the evidence is "clear, convincing, and unequivocal". The credibility and veracity of the witness is for the trial court. In *Brenci v. U. S.*, 175 F. 2d 94 (C. A. 1, 1949) the court discussed the consideration to be given by appellate courts to the findings of trial courts in denaturalization cases:

> "And in addition we interpret them (referring to decisions of the Supreme Court) as requiring appellate courts to make their own findings of ultimate facts, at least in cases, unlike the one at bar, where a decision cannot 'escape broadly social judgments —judgments lying close to opinion regarding the whole nature of our Government and the duties and immunities of citizenship.' *Baumgartner v. United States, supra,* 322 U. S. at page 671, 64 S. Ct. 1240, 88 L. Ed. 1525. *But we do not interpret them as authorizing appellate courts to make independent findings of evidentiary facts of an objective nature when the credibility of a witness is an important factor in reaching a decision.*" (Parenthetical insertion and emphasis provided.)

In the case at bar the decision of the lower court did not involve "broad social judgments" as in *Baumgartner v. United States,* 322 U. S. 665, cited by appellant and mentioned above. The primary issues before the lower court in this case were whether the appellant had been arrested prior to his naturalization and, if so, whether he concealed such fact from the Naturalization Examiner and the Court. In this appeal appellant does not question the finding of the trial court that he had been arrested at least seventeen times. He does question the finding of the court that appellant wilfully concealed such arrests from the Naturalization Examiner and the court. This issue does not involve broad social judgments but concerns "findings of evidentiary facts of an objective nature when the credibility of a witness is an important factor in reaching a decision" *(Brenci v. U. S., supra).*

The courts in interpreting Rule 52(a) of the Federal Rules of Civil Procedure, which relates to all actions tried upon the facts by a jury, have been in general agreement that the appellate court will not re-determine credibility of witnesses where the trial court has the opportunity to observe the demeanor of witnesses, to hear their testimony, and the trial court's determination is not clearly erroneous. See *United States v. Oregon State Medical Society*, 343 U. S. 326. The Sixth Circuit Court of Appeals has consistently held that under Rule 52(a) the witnesses' credibility is for the trial court; (*Provident Life and Insurance Company v. Bertman*, 151 F. 2d 1001, (1945); *Green v. Electric Vacuum Cleaning Company*, 132 F. 2d 312 (1942), dismissed on motion of petitioner, 319 U. S. 777; *Von Moltke v. U. S.*, 189 F. 2d 56 (1951), affirmed 343 U. S. 922). The Supreme Court in interpreting Rule 52(a) has held that "findings as to design, motive, and intent with which men act depend peculiarly upon the credit given to witnesses by those who see and hear them." (*U. S. v. Yellow Cab*, 338 U. S. 338, 341).

In *Knauer v. United States, supra*, the Supreme Court acknowledged that it had given due regard to the appraisal by the trial court of the veracity of witnesses under Rule 52(a) and concluded that the character of the evidence, *"the veracity of the witness against Knauer as determined by the District Court"*, etc., supported the quantum of evidence required by *Schneiderman v. U. S.*, 320 U. S. 118. (Emphasis provided.)

Appellant cited *Cufari v. United States*, 217 F. 2d 404 (C. A. 1, 1954) in support of its position in this matter. But that court again reasserted its position enunciated in the *Brenci case, supra*, at 217 F. 2d 408, stating that the Supreme Court in the *Baumgartner case* did not suggest "that we should wholly disregard findings of fact made

below and ourselves try these cases *de novo* and make findings of fact ourselves." The *Cufari* case merely held that "no arrest" on a docket slip without testimony of the Naturalization Examiner, who allegedly made this notation, was not sufficient evidence that Cufari was asked whether he had ever been arrested and that he had answered in the negative. In the case before this court, in addition to notations on the reverse side of the triplicate copy of the Petition for Naturalization, there is appellant's Preliminary Form signed by him, and the testimony of Naturalization Examiner White.

Furthermore, it is to be noted that on the more important issue—whether a false denial of arrest is sufficient to cancel citizenship, the Court in the Cufari case is in accord with the lower court. (See 217 F. 2d at 408-409.)

B. Proof Required to Attack Judgment on Basis of Fraud.

The Government agrees that the standard of proof in a denaturalization case is the rule laid down in the *Schneiderman case,* to wit: "clear, convincing, and unequivocal evidence."

Appellant's citations on page 10 of his brief to support the proposition that naturalization is a judicial function concern cases involving naturalization proceedings that were conducted prior to the Act of June 8, 1926 (44 Stat. 709), which created "the Designated Examiner system" of naturalization proceedings (See appellant's brief page 5). This Act removed (except in contested cases) the hearing accorded petitioner from the court room to the naturalization office before a Designated Examiner. The plain intent of Congress by this amendment was to set up an administrative body which would conduct non-judicial hearings. (*U. S. v. Scheurer,* 55 F. Supp. 243, 250, D. C. Ore. 1944, reversed on other grounds, 150 F. 2d 535.)

A naturalization proceeding is an *ex parte* proceeding. (*U. S. v. Ali*, 7 F. 2d 728; *U. S. v. Leles*, 236 Fed. 784, D. C. Cal. 1916; *U. S. v. Turlej*, 18 F. 2d 435, D. C. Wyo. 1927; *U. S. v. Scheurer, supra; U. S. v. Parisi*, 24 F. Supp. 414; *Schneiderman v. U. S.*, 320 U. S. 118, 177, dissent by C. J. Stone.)

In the *Scheurer case, supra*, District Judge James Alger Fee, who himself had handled many naturalization petitions, devoted an ample portion of the Opinion in a discussion of the naturalization procedure. In that case as in the case at bar the naturalization petition was filed and the petitioner given a routine examination by a Naturalization Examiner. The examination of the petitioner and witnesses was not in open court. No information derogatory to the petitioner was divulged to the Naturalization Examiner. The petitioner established his eligibility to citizenship to the satisfaction of the Examiner. The petitioner was recommended to the court for citizenship without the court examining him or his witnesses, the petition for citizenship or without making any finding as to any fact. Only if the Naturalization Examiner had objected to the naturalization of petitioner would the court have examined the petitioner and received evidence.

Appellant's naturalization proceeding was not a judicial proceeding, in a sense that a trial was had and evidence presented, etc. The naturalization court merely acted upon recommendation of a Designated Naturalization Examiner without hearing any evidence or examining the petitioner for naturalization.

In a dissenting opinion by Chief Justice Stone in the *Schneiderman* case, 320 U. S. at 175-178, it is pointed out that Congress intended for the naturalization proceeding to be simple and inexpensive by permitting it ordinarily to be *ex parte;* that Congress provided for a revocation

proceeding as a separate and independent opportunity for the Government to cancel citizenship if perchance citizenship was improperly procured. The revocation statute was designed to afford cumulative protection against fraudulent and illegal naturalization. (*U. S. v. Ness*, 245 U. S. 319, 327).

C. Elements Necessary to Establish Fraud and Character Proof Required.

D. Application of principles to Instant Case.

In discussing the nature of fraud it appears that appellant has avoided the definition of fraud in denaturalization cases as enunciated in the *Knauer case, supra.* In the latter case the Supreme Court defined "fraud" as connoting "perjury, falsification, concealment, misrepresentation" (328 U. S. 654, 657). Any falsification, concealment, or misrepresentation in a naturalization proceeding concerning matters about which the Government is entitled to know is ground for revocation in a subsequent denaturalization proceeding.

The law imposes upon the petitioner for naturalization the burden of proving every condition upon which admission to citizenship depends, including that he has behaved as a person of good moral character during the period required by law (*Tutun v. U. S.*, 270 U. S. 568). In fulfilling this duty the petitioner must answer truthfully and faithfully questions propounded by the Government and provide information demanded in order that the Naturalization Examiners, and ultimately the Court, may determine whether the petitioner has established his eligibility to citizenship. (*Del Guercio v. Pupko*, 160 F. 2d 799, C. A. 9, 1947; *U. S. v. DeFrancis*, 50 F. 2d 497, C. A. D. C. 1931; *U. S. v. Accardo*, 113 F. Supp. 783, D. C. N. J. 1953, affirmed *per curiam* at 208 F. 2d 632, C. A. 3, certiorari denied 347

U. S. 952.) If the petitioner provides false or fraudulent information pertaining to his qualification to citizenship and relying on this information, citizenshp is granted, the Court, in a subsequent proceeding, may revoke the naturalization previously decreed.

Where an applicant for citizenship gives false information concerning a matter which the Government is entitled to be informed, the Courts will not condone such deceitful practice for it will undermine the whole procedure preliminary to naturalization and frustrate the purpose of Congress (*Knauer v. U. S., supra; Del Guercio v. Pupko, supra*). In the *Del Guercio case* (160 F. 2d at page 800) the Court pointed out that the making of a false statement (the falsification in that case being a denial of ever having been arrested or charged with the violation of any law, etc.) involves moral turpitude and exhibits an unfitness of the applicant for citizenship.

In the cases of *Sweet v. U. S.* and *Charnowola v. U. S.*, decided jointly at 211 F. 2d 118 (cert. denied 348 U. S. 819), this Circuit Court, in cases involving false representations, and concealment of membership in the Communist Party, held it was fraud in a naturalization proceeding to falsely deny membership in the Communist Party. This Court stated that concealment of membership in the Communist Party thwarted inquiry into the petitioner's eligibility for citizenship (211 F. 2d at 118). In the *Charnowola* case the Court went further and held that the concealment of membership in the Communist Party, even though outside the ten-year statutory period (8 U. S. C. 705, 1946 Ed.), was material to the issue whether he should be granted citizenship. At 211 F. 2d page 120, in approving the decision of the lower court, this Circuit Court said:

"In No. 11,912, the George Charnowola case, Judge Picard pointed out that the defendant was not charged with being a Communist, either at the present time or during the ten-year period previous to his application for citizenship; but that the gist of the Government's action to cancel his citizenship was the false information which he gave to the Naturalization Examiners under oath when he stated that he had never been a Communist when, as a matter of fact he had been. The Judge quoted from the opinion of the Supreme Court in the *United States v. Ginsberg*, 243 U. S. 472, 475, 37 S. Ct. 422, 425, 61 L. Ed. 853, *supra*, as follows: 'No alien has the slightest right to naturalization unless all statutory requirements are complied with; and every certificate of citizenship must be treated as granted upon condition that the government may challenge it, as provided in Sec. 15, and demand its cancellation unless issued in accordance with such requirements.'"

In the case of *U. S. v. DeFrancis, supra*, the Court held it was fraud for a petitioner for naturalization to conceal from the Naturalization Court a conviction for the sale of intoxicating liquors. The Court quoting from another case, stated at 50 F. 2d 498:

"If a party conceals a fact that is material to a transaction, knowing that the other party is acting on the assumption that no such fact exists, the concealment may be as much a fraud as if the existence of a fact were expressly denied, or the reverse of it expressly stated." (Also quoted in *U. S. v. Zgrebec*, 38 F. Supp. 127, D. C. Mich. 1941.)

The fraud or false statements need not be committed directly on the court. It is sufficient if the fraud was committed on the Government during any step of naturalization process. (*U. S. v. Saracino*, 43 F. 2d 76, C. A. 3, 1930; *U. S. v. Anastasio*, 120 F. Supp. 435, D. C. N. J., 1954). In the *Saracino case* the Court cancelled the defendant's Cer-

tificate of Naturalization on the ground that he had denied under oath before the Naturalization Examiner that he had ever been arrested, and wilfully concealed from the Naturalization Examiner and the Naturalization Court that he had been arrested and convicted, prior to naturalization, for aggravated assault and battery and assault and battery with intent to kill. The Court said that an alien seeking admission to citizenship must deal with the Government with utmost good faith; that false representations by a petitioner for citizenship to the Naturalization Examiner regarding his moral character is fraud warranting cancellation of the Certificate of Citizenship.

In the case of *U. S. v. Zgrebec, supra,* at 38 F. Supp. page 129, the court said in cancelling a Certificate of Citizenship that:

> "If we pass over lightly any false or fraudulent representations made to secure citizenship we can expect an utter contempt on the part of these who receive it, * * * that to obtain it one must approach the portal with a frankness that cannot be subject to doubt."

The Court pointed out that the duty rests upon the petitioner and not upon the United States to see that he makes no false statements. See *U. S. v. Palmeri,* 52 F. Supp. 226, D. C. N. Y., 1943.

In the case of *U. S. v. Mancini,* 29 F. Supp. 44, D. C., Penn., 1939, the defendant was charged with having procured his naturalization by fraud "by concealing facts as to his moral character, by falsely testifying under oath that he had never been arrested or charged with crime." The defendant denied that he had been asked the question. The Court stated:

> *"The law is clear that the disputed question is proper as bearing on moral character of the alien.* If the question were asked, falsely and fraudulently answered, and if the United States proved the facts by a preponderance of the evidence, (The Schneiderman decision requires the proof to be clear, convincing and unequivocal) the Certificate of Citizenship should be cancelled: *Gaglione v. United States,* 1 Cir., 35 F. 2d 496; *United States v. Saracino,* 3 Cir., 43 F. 2d 76; *United States v. Rovin,* D. C., 12 F. 2d 942." (Parenthetical insertion and emphasis provided.)

The Court decided that the disputed question was asked the defendant and he answered it falsely and fraudulently, concealing material facts concerning his character, to-wit: an unsavory list of arrests; and ordered the defendant's citizenship to be cancelled.

In *U. S. v. Accardo, supra,* the court cancelled the Certificate of Citizenship of defendant for fraud and illegality. Defendant was charged with having failed to disclose arrests and convictions prior to his naturalization which would have shown that he had been frequently in conflict with the law enforcement authorities for some fifteen years. The Court pointed out at 113 F. Supp. page 785, that

> "It was defendant's duty to disclose an arrest, as well as a conviction, in order that the Government might investigate before granting the decree. *Gaglione v. U. S.,* 1 Cir., 1929, 35 F. 2d 496; *In re Paoli,* D. C. Cal. 1943, 49 F. Supp. 128. That defendant's wilful failure to disclose this situation to the authorities had a material effect upon the action of the Naturalization officials and the Court in its decision to grant the decree, is undoubted. Particularly is this the case, since even the limited disclosures of the defendant were not passed on by the immigration officials, even tentatively, but referred to the Court for its own decision thereon."

The Third Circuit Court of Appeals in affirming the Accardo decision *per curiam* (208 Fed. 2d 632), stated that it agreed with the opinion of the District Judge and "it would be a waste of words to add anything to his opinion."

False statements during any step of a denaturalization proceeding were held sufficient grounds for cancellation of naturalization certificates in the following additional cases: *Johannessen v. U. S.*, 225 U. S. 227; *U. S. v. Rutman*, 27 F. Supp. 891, D. C. N. Y. 1939; *U. S. v. Goldstein*, 30 F. Supp. 771, D. C. N. Y. 1939; *U. S. v. Marino*, 27 F. Supp. 155, D. C. N. Y. 1939; *U. S. v. Etheridge*, 41 F. 2d 762, D. C. Ore. 1930; *U. S. v. Goglia*, 21 F. Supp. 894, D. C. N. Y. 1938; *U. S. v. Marcus*, 1 F. Supp. 29, D. C. N. J 1932; *Schwinn v. U. S.*, 112 F. 2d 74, C. A. 9, 1940, cert. denied 311 U. S. 616. In the latter case the Court of Appeals had this to say applicable to the facts before this court:

> "Here the party seeking citizenship had adequate means of ascertaining the truth or falsity of the statements he and his witnesses made in the application, and could have avoided the false representations which accompanied his application to the Court of a nation whose beneficences he sought, by scarcely more than a casual checking of the facts."

The Fifth Circuit Court of Appeals denied citizenship to an applicant for naturalization who, during his preliminary examination before Naturalization Examiners, in order to facilitate and insure his naturalization, gave false statements concerning his arrest record. The Court denied the petition for naturalization notwithstanding that "in his numerous brushes with the law, information as to which was withheld by him, the applicant had not been convicted of a felony." (*U. S. v. Docherty*, 212 F. 2d 40, C. A. 5, 1954).

Where the petitioner had informed the Naturalization Examiner that he had only been arrested once and that arrest was merely for speeding, but the petitioner had in fact been arrested fifteen other times (12 times for failing to pay wages, 2 times for traffic violations, one time for obtaining money by false pretenses), the District Court was warranted in denying the petition for citizenship. (*Stevens v. U. S.*, 190 F. 2d 880, C. A. 7, 951). The Court said at page 881:

> "We have no doubt but that a false statement knowingly made by an applicant for naturalization in the course of such proceeding would afford a proper basis for denying the application, and it is immaterial that the false statement knowingly made concerned violations which occurred previous to the five-year period. On this point we agree with a recent decision of the Illinois Supreme Court, *Sodo v. United States*, 406 Ill. 484, 94 N. E. 2d 325, and this is so notwithstanding that such violations standing alone would not afford a proper basis for the denial of the petition."

In *U. S. v. Anastasio, supra*, the defendant was asked in 1931, in an Application for Registry before the Immigration Service, whether he had ever been arrested and he answered "No". A record of registry was created for Anastasio and this record was the basis for the issuance of his Certificate of Arrival in his subsequent naturalization proceeding. Anastasio was naturalized and subsequently it was discovered that he had been arrested and convicted several times prior to his registry hearing in 1931. After holding that the fraud in the registry proceedings invalidated every step in the naturalization proceedings and subject's citizenship would be revoked, the Court went on to say:

> "It was his duty to fully and honestly disclose, both in his application and upon oral examination his prior arrests and convictions. *This evidence was relevant and material to the subject matter of inquiry.*" (120 F. Supp. at 440.) (Emphasis provided.)

MATERIALITY

It is the position of the Government that a false denial by a petitioner for naturalization that he has any arrests, etc., is fraud in a denaturalization case if said denial is either "perjury, falsification, concealment, misrepresentation" and, therefore, within the definition laid down in the *Knauer* decision, *supra*. If the cases already cited do not conclusively resolve the question of materiality of such false denial, the case of *Gaglione v. U. S.*, 35 F. 2d 496, C. A. 1, 1929, certiorari denied 281 U. S. 712, should erase all doubts on this point. In that case the Court of Appeals, First Circuit, upheld a conviction for perjury in a naturalization proceedings where the defendant, under oath, before a Naturalization Examiner denied that he had ever been *arrested* whereas he had in fact been arrested several times. The Court held that the inquiry as to whether defendant was arrested was pertinent to a determination whether he had been a person of good moral character during the statutory period, and a false swearing or perjury in a naturalization proceeding was a violation of Section 142, Title 18 U. S. C. (1927); 35 Stat. 1103, which provided:

> "Whoever in any proceeding under or by virtue of any law relating to the naturalization of aliens, shall knowingly swear falsely in any case where an oath is made or affidavit taken shall be fined not more than $1,000 and imprisoned not more than five years."

Indictment for the same offense and holding that inquiry into applicant's naturalization record of arrest is material upheld in *U. S. v. Bressi* (208 F. 369, D. C. Wash. 1913). The courts have also upheld the materiality of inquiry into arrests of a witness of a petitioner for naturalization, sustaining conviction of the witness under 18 U. S. C. 142, quoted above (*Rein v. U. S.*, 69 F. 2d 206, C. A. 3, 1934). The Court, in the Rein case spoke as follows at page 207:

> "A false answer that conceals his lack of qualification to testify or that heads off further inquiry is precisely what the statute forbids. Although the mere arrest of a person does not prove that he is a man of bad moral character, the inquiry in these proceedings as to arrest of a witness is but the first step of others that normally would follow in ascertaining the qualification of the witness to testify. And so the question here asked of the defendant—as to whether he had ever been arrested—was, we think, proper, at least preliminarily, for according as he truthfully answered 'No', the government was thwarted in its inquiry and was thereby induced improperly to grant citizenship to one not shown to be qualified to receive it. Thus, in view of the nature of the proceeding, the false answer became material. * * *"

There can be no doubt but that appellant Corrado's denial that he had ever been arrested or charged with any violations, etc. was a deliberate and wilful false statement, a fraudulent misrepresentation intended to deceive the naturalization officers and the Court. He denied in his Preliminary Form for Petition for Citizenship (Exhibit 1) that he had ever been arrested or charged with any offense. He well knew at that time that he had been arrested and charged with a number of criminal offenses and had suffered convictions on at least two occasions. Former Naturalization Examiner White testified that the checkmarks on

the foregoing application indicated that he had reviewed the said application wtih the appellant and had verified his answers; that the notations by Examiner White on the triplicate copy of the Petition for Naturalization (Exhibit 2) indicated that appellant had told him that he had no criminal record (67a, 77a). The appellant denied ever having been arrested or charged with any offense when he well knew that he had been arrested many times, brought to the police station and even detained in jail over night; that he had been indicted or charged for criminal violations, arraigned in court, and even subjected to trial; that he had executed bonds after arrest to gain his freedom, some of these bonds involving sums of several thousand dollars; that he had been arrested and charged with murder in Detroit in 1929. At the time of appellant's naturalization an indictment was outstanding charging him with murder. Just a few weeks before his naturalization the Federal Court dismissed a Dyer Act indictment pending against him. It is inconceivable that appellant did not know of the murder charge or the Dyer Act dismissal. At least he knew and did admit that he had been arrested prior to his naturalization several times. He was well known to the police officers, who were assigned to the Black Hand Squad in Detroit. The only conclusion to be drawn from appellant's denial that he had ever been arrested or charged with any violation is that appellant knew that disclosure would have resulted in an investigation, and unfavorable action would be taken on his petition for naturalization.

Congress has required a petitioner to show that he has behaved during the statutory period as a person of good moral character in order to show his fitness for citizenship. An applicant therefore can be required to disclose any past history of arrests, etc. This is material to an inquiry as to whether he is a person of good moral char-

acter. An alien can only become a citizen by becoming a witness in his own behalf, speaking freely and truthfully regarding his qualifications and fitness for citizenship. The District Court stated in *U. S. v. Charnowola, supra,* at 109 F. Supp. at 811:

> "In other words, every applicant for citizenship in this country must come in with clean hands. There can be no fraud in the securing of that citizenship, whether that fraud be failure to disclose what it is obvious must be material or be an outspoken misrepresentation."

Inquiry into the arrest record of a petitioner is so closely related with determination of good moral character as to require no further comment. A history of arrests will precipitate further examination and investigation of the petitioner. The purpose of Question No. 29 (Exhibit 1; 479a), "Have you ever been arrested or charged with violation of any law of the United States or State or any City ordinance or traffic regulation?" was to determine whether the appellant had been arrested, etc., and, if so, to have an "opportunity for adequately investigating whether reasons exist for denial of the petition" (*U. S. v. Ness,* 245 U. S. 319 at 323). By making false statements during the naturalization process appellant committed fraud and precluded investigation into his fitness for citizenship, to-wit: his good moral character and disposition toward the good order and happiness of the United States (*U. S. v. Accardo, supra*).

Appellant contends that arrests prior to the five-year period from August 18, 1931, the date he was naturalized, should not have been considered by the court below (Appellant's brief, page 14). Appellant argues that whatever occurred prior to this period is not material to the question of appellant's good moral character during the statutory period.

The United States Circuit Courts which have passed on the question are in accord that inquiry may be made into matters relating to petitioner's eligibility for citizenship antedating the statutory period; that evidence of violations or activities prior to the statutory period, if relevant, may be considered in order to determine whether the petitioner was possessed of the necessary prerequisites for citizenship during the statutory period (*Molson v. Young*, 182 F. 2d 480), C. A. 5th, 1950; *Yuen Jung v. Barber*, 184 F. 2d 491, C. A. 9th, 1950; *Marcantonio v. U. S.*, 185 F. 2d 934, C. A. 4th, 1950; *Ralich v. U. S.*, 185 F. 2d 784, C. A. 8th, 1950; *Krausse v. U. S.*, 194 F. 2d 440, C. A. 2nd, 1952.

In *Molsen v. Young, supra*, 182 F. 2d at 483, the court said:

> "The statute does not require that the evidence necessary to meet the test of loyalty and good character be confined to the five-year-period. It merely disqualifies for citizenship those who cannot show the requisite loyalty and good moral character for at least five years prior to their application, and thereby fixes the minimum requirement as to the statutory qualifications which petitioners for citizenship must meet."

Chief Judge Parker in *Marcantonio v. United States, supra*, 185 F. 2d at 936 stated:

> "We entirely agree that evidence of offenses committed prior to the five year period prescribed by the statute could be received and considered with other evidence as a basis for finding that the petitioner had not shown good character within the five year period and at the time of the application as the statute requires. *Molson v. Young*, 5 Cir., 182 F. 2d 480, 483; *Yuen Jung v. Barber*, 9 Cir., 184 F. 2d 491."

On page 14 of appellant's brief there is quoted an excerpt from the *Marcantonio* case which, taken out of context, makes it appear that the case stands for the proposition that the court will not consider any evidence of conduct or crimes prior to the statutory period. But this is what the court said in that case, immediately preceding the excerpt that appears in appellant's brief (185 F. 2d at 937):

> "The learned judge below did not distinguish, we think, between considering evidence of crimes committed prior to the five year period as bearing upon the question of character within that period and denying a petition for naturalization on the basis of such crimes. The former is permissible for the reason that the judge may consider any proper evidence having reasonable tendency to prove or disprove good character; *and the fact of petitioner's having committed serious crimes at any time during his life has a bearing on his character.*" (Emphasis provided.)

Even in the Second Circuit where appellant was naturalized, the court held in *Krause v. U. S., supra,* 194 F. 2d at page 442, that conduct prior to the statutory period "if not too remote in time, is substantially relevant to his mental attitude during the critical period." The issue in the Krause case was attachment and not good moral character.

Appellant cites *Petition of Zele,* 140 F. 2d 773, decided by the Court of Appeals, Second Circuit, in 1944, and *U. S. v. Rubia,* 110 F. 2d 92, decided by the Court of Appeals, Fifth Circuit, 1940, in support of his position on the foregoing question.

In the *Zele case* the petitioner swore falsely in connection with an Application for Declaration of Intention more than five years prior to the filing of his Petition for Natu-

ralization. During the five year statutory period he confessed to the false statement, alleging that he had received bad advice. The Court, adhering to a "liberal" statutory construction, said that it would not deny citizenship to the applicant for a false statement made more than five years from the date of the petition for naturalization The *Zele case* is not comparable to the case at bar, inasmuch as Zele was truthful during the five-year period whereas Corrado concealed and misrepresented the truth.

In the *Rubia case* the petitioner was convicted twelve years prior to his petition for naturalization. In that case, as the Court pointed out, the Government did not seriously urge that this was an impediment to naturalization, there being no false denials concerning said conviction. Consequently the *Rubia* case is no precedent in the case at bar. Furthermore, whatever value the Zele and Rubia cases may have been to appellant's argument has been erased by the later expressions of the Second and Fifth Circuits in the *Krause* and *Molson v. Young* decisions, respectively.

At this point it should be noted that the Government sought to place before the trial court appellant's post-naturalization conduct in order to show a continued pattern of behavior and, as pointed out by the trial court, as tending to reflect on his credibility and tending to show whether or not appellant lied during his naturalization proceeding (253a-261a). The lower Court offered to permit appellant to put into evidence proof of his good moral character after his naturalization, and upon appellant's refusal to accept this tender, the Court refused the government's request to inquire into appellant's bad conduct after naturalization (468a-469a). Evidence of activities after naturalization is admissible if it has a bearing on petitioner's good moral character or attachment to the Constitution prior to naturalization, his oath of allegiance, or portrays a

pattern of conduct (See citations in lower court's opinion (501a); also see *Knauer v. U. S., supra*, 328 U. S. at 668; *U. S. v. Accardo, supra*, 113 Fed. Supp. at 786; *U. S. v. Eichenlaub*, 180 F. 2d 314, C. A. 2, 1950, Cert. den. 339 U. S. 983; *U. S. v. Chruszcak*, 127 F. Supp. 743, D. C. Ohio, 1954, affirmed Dec. 13, 1954, C. A. 6).

In *U. S. v. Boano*, 16 F. R. D. 379, D. C. N. Y., 1954, the court said:

> "It is also well established that defendant's conduct and actions subsequent to his naturalization may be relevant in determining whether his statements at the time of naturalization were truthful."

It is the contention of the Government that if appellant made false representations during the naturalization proceedings concerning a matter which the Government is entitled to know, that he committed fraud and his naturalization is subject to cancellation for that reason; that such fraud reflects adversely on his character and consequently his naturalization also is subject to cancellation on the ground of illegality in that he was not a person of good moral character.

Appellant argues that this court should ignore his false representations and should now determine whether he was a person of good moral character when he was naturalized in 1931 on the record of arrests and convictions introduced at the denaturalization trial. He argues further that the Court below stated that had appellant revealed his entire arrest record, "it does not necessarily follow that he would have been denied citizenship" (Appellant's brief pages 14-15). But appellant omitted the remainder of the Court's findings • • • "that this was the information that the examining officers were charged by law with obtaining and to which they were entitled" (504a). The law referred to by the trial court, contained in Exhibit 3, will be set out below.

The burden of proof would have been on appellant prior to naturalization, to show that he is a person of good moral character. He argues in effect that if he can procure his naturalization by false swearing that this fraud is to be ignored, and he is to be further rewarded for his deceit by requiring the government now to assume the burden of disproving his eligibility for citizenship, which, but for his fraud would have been his burden to prove. To sustain appellant's argument would be an invitation to all aliens who may have reason to believe that they are not eligible to citizenship, to falsify or conceal, and if thereby they acquire citizenship, to confidently declare: "I could not have proven my eligibility for citizenship if I had spoken the truth. But because I committed fraud, I am not a citizen. It is not enough that you prove that I committed fraud. You must also prove that I was not eligible for citizenship when I was naturalized." Appellant, by this argument, would emasculate the revocation statute (8 U. S. C. 738) by deleting therefrom the word "fraudulent" and leave only the word "illegality". The argument put forward by appellant is the justification, if any is needed, for cancellation of citizenship for fraud. In denaturalization cases the burden of the government is to prove the fraud and/or illegality, as the case may be. Inasmuch as the commission of fraud establishes that the appellant is a person lacking in good moral character, his citizenship is also subject to cancellation for illegality.

Introduced at the trial below as Exhibit 3 were the Naturalization Rules and Regulations, July 1, 1929, which were effective at the time of appellant's naturalization. Rule 1, Subdivision G, paragraph 2 of the Naturalization Rules and Regulations at page 64 of Exhibit 3, in part, reads as follows:

"Wherever practicable preliminary examinations of applicants for citizenship and their witnesses will be made in person. The principal purpose of such examinations is to obtain information bearing upon the applicant's admissibility to citizenship and the qualifications of the witnesses, rather than to obtain responses for record purposes. Both the applicant and the witnesses shall be carefully interrogated to determine whether the applicant has complied with the jurisdictional requirements of law, is mentally and morally qualified for citizenship, is attached to the principles of the Constitution, and is well disposed to the good order and happiness of the United States. *The question of possible arrests must be thoroughly covered.* If the applicant has been arrested or charged with the violation of any law or ordinance, all the facts will be ascertained, including information as to whether conviction resulted. * * * The questions will be repeated in different form and elaborated until the examiner is satisfied the person being interrogated fully understands them." (Emphasis provided.)

These regulations, in effect at the time of appellant's examination for citizenship, stated that "possible arrests must be thoroughly covered". Do such regulations leave any doubt about the materiality of an arrest record of the petitioner for naturalization, and the fact that the government was entitled to be informed about arrests? Not only must the applicant disclose such arrests to the Naturalization Examiner or the Court but he must also list his arrests in response to Question 29 in the Preliminary Form for Petition for Citizenship (Exhibit 1, 479a), a part of the naturalization process.

Appellant argues that mere arrests within the statutory period should not be considered by the District Court (Appellant's brief, page 15) and cites *Michelson v. U. S.*, 335 U. S. 469, as applicable to his argument. That case in-

volved the right of the Prosecuting Attorney to cross-examine Michelson's character witnesses concerning an arrest. Appellant has quoted an excerpt from the above decision to the effect that an arrest alone does not impeach or impair the credibility of a witness. What the appellant did not report was that the Michelson case also held that when an accused creates an issue of his character, that it is not error for the prosecution to inquire into his arrests, although there was not a conviction. In other words, a witness' credibility cannot be attacked by asking him if he has been arrested, but if the witness is testifying about the reputation of an accused, he may be questioned about the accused's arrests. The Supreme Court in the *Michelson case* said, at 335 U. S. page 482:

> "Arrest without more may neverthelss impair or cloud one's reputation."

Although the issues in the *Michelson case* are not in point with the case at bar, it presents this analogous situation: Whenever a person's reputation or good moral character is at issue, it is proper to inquire into arrests. A petitioner for naturalization is required by law to establish good moral character if he is to qualify himself for naturalization, and consequently his character or reputation is at issue. It is contrary to all experience to suggest that it is not proper to inquire into arrests when examining a person's good moral character.

The case of *Pearson v. U. S.*, 192 F. 2d 681, cited by appellant at page 15 of his brief, is not in point inasmuch as it involves a *criminal* case where the accused was asked whether he had ever been arrested. The court held that in *discrediting* an accused, he can only be questioned about convictions and not arrests. This is not the issue in the case at bar.

The same rule was applied in *National Labor Relations Board v. Baldwin Locomotive Works,* 128 F. 2d 39, C. A. 3, 1942, cited by appellant and is not in point. *U. S. ex rel. Castro-Louzon v. Zimmerman,* 94 F. Supp. 22, D. C. Pa., 1950, cited by appellant is a deportation case. The issue there was not whether the government had a right to inquire into arrests but whether under the facts the District Director of Immigration and Naturalization abused his discretion in not granting discretionary relief. No false statements were involved. The decision accepted the fact that in an application for discretionary relief the government has a right to inquire into arrests and "there is a duty to inquire into the facts" surrounding an arrest or charge (94 F. Supp. at 26).

The appellant argues that arrests are not material to the issue of good moral character (page 18, appellant's brief). This statement is contrary to experience and all legal expression on the subject. Not only in the field of naturalization but in many other endeavors, when inquiry must be made as to good moral character, the subject must answer as to arrests. As heretofore stated, the courts have held that arrests may affect a person's reputation. In a naturalization proceedings an inquiry into arrests serves a much broader purpose. It is the duty of the petitioner for naturalization to disclose arrests, as well as convictions, in order that the Government might conduct an appropriate investigation or make further inquiry about the arrests (*U. S. v. Accardo, supra; U. S. v. Chruszcak, supra).* Convictions are not the only basis for determining whether a petitioner is behaving as a person of good moral character. Conduct of the applicant which resulted in the arrest and which an investigation may disclose may determine whether a person is of good moral character. Can the appellant argue that a petitioner for naturalization who is under indictment for murder has a right to be naturalized without investigation by the Government?

But the real issue in this case is not whether appellant's arrests are material to a determination of good moral character, but whether a person who lies about his arrest record, including convictions, has committed fraud, and the effect of such fraud on the issue of good moral character. The government has a right to inquire into the arrest record of any petitioner for citizenship in order to uncover any evidence reflecting on his good moral character or disposition toward the good order and happiness of this Government. This very pertinent question was asked in *U. S. v. Accardo, supra,* 113 F. Supp. at 786, as follows:

> "How can a person claim to be of good moral character or well disposed to the good order and happiness of the United States at the very time he is seeking to defraud the United States, in a matter of moment to him and to the country?"

In *Brenci v. U. S., supra,* the petitioner wilfully and fraudulently failed to disclose a conviction. Petitioner contended that the conviction did not involve moral turpitude and consequently his concealment thereof was not material. The Court cancelled Brenci's citizenship for fraud, holding that concealment of the conviction was the only issue and "whether or not the crimes involved moral turpitude was not an issue"; that it is no defense in an action to cancel citizenship for fraud by wilfully concealing a conviction that the crime does not involve moral turpitude.

In the case of *Stevens v. U. S., supra,* the court denied citizenship to a petitioner who concealed arrests which occurred outside the statutory period. The petitioner argued that his falsification was not material contending that his arrests, having been made outside the statutory period, should not be considered. The Court held that the petitioner's argument was "beside the point" and that naturalization will be denied to a petitioner who knowingly and

wilfully testified falsely with respect to his arrest record in order to facilitate naturalization. The Court pointed out further that it had no doubt that a petitioner could be prosecuted for false swearing *even though the false statements concealed violations which occurred prior to the statutory period, and notwithstanding that the violations alone would not afford a proper basis for denial of the petition.*

The Court of Appeals, Sixth Circuit, in effect reached the same conclusion when it affirmed *Charnowola v. U. S., supra.* Both the trial court and the Circuit Court pointed out that the gist of the government's action was the false information which Charnowola gave the Government when he stated he had never been a Communist, when in fact he had. In that case, as in this case, the appellant argued that assuming that a false statement had been made it is not material for it related to conduct outside the statutory period. The Court of Appeals in the Charnowola case approved the lower Court's finding that the appellant should have truthfully answered the question whether he had ever been a Communist and since he had not done so he had obtained his citizenship by fraud.

In *U. S. v. Etheridge,* 41 F. 2d 762, D. C. Ore. 1930, the Court said at page 764:

> "It, of course, does not necessarily follow that, because an applicant has been guilty of some moral delinquency prior to the commencement of the five-year period, he should not be admitted; but he should, when requested, disclose the facts so that the court may be fairly advised whether upon the whole evidence it is satisfied that he has in fact been of good moral character during the five-year period. In order to determine that question, the court should be advised of his former conduct and behavior, and if it is intentionally concealed from it by the appli-

cant an order of admission will be vacated and set aside."

See also *In re Talerico*, 197 F. 1019, D. C. Pa. 1912.

On February 19, 1954, the Court of Appeals, Sixth Circuit, in affirming *U. S. v. Sweet, supra*, (decided in the U. S. District Court, Detroit, Michigan at 106 F. Supp. 634) upheld the finding of fraud by the lower court and noted that the District Judge had found "that the testimony left no doubt that the defendant had concealed his history of Communist Party membership from the naturalization authorities *and had thereby thwarted inquiry into his eligibility for naturalization.*" (Emphasis provided.)

Where an alien seeking to enter the United States makes false statements so as to preclude or circumvent inspection it is ground for deportation (*U. S. ex rel. Natali v. Day*, 45 F. 2d 112, C. A. 2, 1930; *U. S. ex rel. Volpe v. Smith*, 62 F. 2d 808, C. A. 7, 1933). In the latter case the court said at page 612:

> "*What the officer would have discovered or might have discovered, had the inspection not been thwarted, is beside the question. The inspection contemplated was defeated. In legal effect, there was no inspection.*" (Emphasis provided.)

This statement can be applied with equal force to the case at bar.

The materiality of appellant's arrests and convictions in a naturalization or a denaturalization case loses its importance where there is fraudulent concealment in the procurement of naturalization. If the fraud had been detected prior to naturalization, the fraud itself would become material, inasmuch as it would have a direct and material bearing on applicant's good moral character. Simi-

larly, if the fraud is not detected and the alien is naturalized, then in a later denaturalization suit for fraud, the facts which constitute the fraud is the primary and material issue before the court. Whether the conduct (or criminal record), that the alien concealed, would or would not have been grounds for denial of the petition need not be decided at the denaturalization trial. At a denaturalization trial, where the issue is fraud—the only question for the court is whether there was misrepresentation or concealment. If the court finds that there was fraudulent misrepresentation or concealment, such fraud, having occurred during the statutory period and as a part of the naturalization process, is evidence that the applicant was not a person of good moral character and his naturalization should be revoked on the grounds of both fraud and illegality.

The question is not, as propounded by defendant, whether the arrests that were concealed by defendant were material to his eligibility for citizenship.

At page 17 of Appellant's brief he seeks to minimize the oral preliminary examination of Naturalization Examiner White, contending that examination by the Designated Examiner (testimony not available because he is dead) is the only one that should be considered. As heretofore pointed out false statements during any stage of the naturalization proceedings has been held sufficient grounds for cancellation of Certificate of Naturalization. The preliminary examination by Naturalization Examiner White was in accordance with the rules and regulations (Exhibit 3) quoted above, and a part of the naturalization proceedings.

In *U. S. v. Anastasio, supra,* false statements made in a registry proceedings was held by the court to be a step in the naturalization proceedings and grounds to cancel

citizenship for fraud. The court said it was the duty of the petitioner to "fully and honestly disclose, both in his *application* and upon *oral* examination, his prior arrests and convictions." (120 F. Supp, at 440; emphasis provided.)

The evidence discloses that appellant made false statements in his Preliminary Form for Petition for Citizenship concerning his arrest ecord and repeated the false statements to Examiner White. Is it to be presumed that he changed this pattern in his examination before the Designated Examiner? In the absence of any proof to the contrary there is a strong presumption that public officials have properly discharged their duties. (*Lewis v. U. S.*, 279 U. S. 63; *Stone ex rel. Coloma v. Tillinghast*, 32 F. 2d 447, C. A. 1, 1929; *Daskaloff v. Zurbrick*, 103 F. 2d 579, C. A. 6, 1939.) It is not to be presumed in face of the statements in appellant's Preliminary Form for Petition for Citizenship and his testimony before Naturalization Examiner White that he told the Designated Examiner the truth about his arrests and convictions, and the Designated Examiner acted improperly.

The Appellant, at page 18 of his brief, refers to subsequent "depositions or investigation" in Detroit and infers that such depositions or investigation might relate to appellant's arrest record. Naturalization Examiner White testified (67a) with relation to the notations on the reverse side of the triplicate copy of the Petition for Naturalization (484a, Exhibit 2), and referred to a notation that meant "that depositions had to be taken in Michigan to cover the period of April 1, 1926, to June 14, 1929, and that they were presented". He undoubtedly referred to the notations "Deps Mich 4/1/26 to 6/14/29", and other notations indicating that the depositions were received and were "O.K.".

First of all, Naturalization Examiner White did not testify that an investigation was conducted (67a). He testified that depositions had been taken in Michigan. These depositions were taken in accordance with Fourth Subdivision of Section 4, Act of June 29th, 1906, as amended (45 Stat. 1514) which provided that residence within the United States but outside the county where the petition was filed (in excess of six months), and other qualifications required by the subdivision, shall be proved by depositions before a Naturalization Examiner or by oral testimony. Regulations thereto are contained in Rule 7, Subdivision D., Naturalization Rules and Regulations (Exhibit 3). These depositions in appellant's case were taken on printed forms as set forth in the Regulations and should be on file with the Clerk of the United States District Court, Brooklyn, New York. The witnesses making the depositions merely appeared before the Naturalization Examiner and, under oath, answered the printed questions on the form. No outside investigation would be conducted unless requested by the Naturalization Examiner (176a, 177a). The evidence does not disclose that any such investigation was conducted nor does it appear that the Naturalization officials had cause to request one, inasmuch as the appellant did not disclose his arrest record.

At page 18 of his brief, appellant infers that the court below should have ignored appellant's answer to Question 29 on his Preliminary Form for Petition for Citizenship and also his answers to Naturalization Examiner White that he had never been arrested; that inasmuch as said Preliminary Form for Petition for Citizenship was filled out by another that he should not be bound by the answers that appeared on said application. The District Judge made a finding, after full opportunity to hear and observe the appellant as a witness, that he did not believe appel-

lant when he testified that he failed to answer Question 29 truthfully because the person who helped him fill out his application informed him that if he had not served "time" the arrest did not count (503a). Appellant's brief, page 17, alleges that the District Judge, in making this finding in his opinion, had changed his position from the one he had adopted at the trial. But on February 8, 1954, during argument on the motion to reopen proofs filed by appellant, the District Judge stated that when he had made a finding at the close of the denaturalization trial that appellant spoke untruthfully when he said he went across the street and procured someone to prepare the preliminary application for him, that he meant that he did not believe the appellant when he said that the person who assisted him in filling out the application advised him that it was not necessary to list the arrests. (Appellee's Appendix 2b.)

An examination of the trial record shows that even if appellant were to be believed he concealed the complete record of his arrests from the person who assisted him (431a). He only informed that person of one offense—that he was arrested for investigation and paid a $25.00 fine for disturbing the peace.

Naturalization Examiner White testified, after referring to Exhibit 1 and notations on Exhibit 2, that the appellant affirmed his answer "No" to Question 29 in Exhibit 1 (62a-67a). There is only one reason for appellant to have concealed his record of arrests and convictions during the naturalization proceedings, and that is to fraudulently deceive the Naturalization Examiner and the Court—to preclude an investigation into his qualifications as a person of good moral character.

Appellant cites, as applicable to the facts in this case (Appellant's brief, page 18) the decision in the *Davis v. Commissioner of Internal Revenue*, 184 F. 2d 86, C. A. 10, 1950, which held that the false income tax return prepared by a competent, experienced, and reputable tax counsellor does not necessarily mean that the taxpayer committed fraud. The court said that the responsibility for filing a correct tax return is upon the taxpayer, but where it is shown that the tax collector was competent, experienced, and reputable and full information was provided him, it does not necessarily follow that the taxpayer is guilty of fraud for a false statement by the tax counsellor. The Court below has made a finding that he does not believe appellant when he said Question 29 of the preliminary application (Exhibit 1) was answered "No" on advice of an Immigration counsellor. But assuming that this appellate court believes appellant, the foregoing tax decision is not applicable to the facts in this case. In this case it is not even known who the Immigration consultant was. We do not know what was the experience of said consultant or whether he was competent or reputable. Furthermore, appellant did not disclose all his arrests and convictions to him. The income tax decision relied on by appellant concerned a tax consultant who received records from the taxpayer and because of the complexities of tax laws made many decisions without ever consulting the taxpayer. But in filling out the Naturalization forms the applicant must and did confer with the Immigration consultant.

Appellant deplores the fact that the court found that he had an improper purpose in answering Question 29 instead of a legitimate one. If appellant's arrest record consisted of only one or two offenses and he failed to disclose them his tale about his relationship with the Im-

migration consultant might be credible. We suggest that to expect the lower court of this court to believe that a legitimate, competent and reputable Immigration consultant would have advised appellant not to disclose a criminal record of at least fifteen arrests and two convictions taxes credulity to the limit. It is not reasonable to believe that if appellant had disclosed all of his arrests, the many times he has been at liberty on high bonds, his several arrests for robbery armed, his arrests for murder, that an honest or competent Immigration consultant, knowing that such information is required by the Naturalization officials in determining good moral character, would have advised appellant as he alleges.

Although the Government and the court below do not accept as true appellant's statement that he acted on the advice of a consultant, but assuming that he did it is pointed out that the Court of Appeals for this circuit has expressed the following rule:

> "It is now, however, very generally held that knowledge may be attributed to persons making false representations in circumstances where it is their duty to know whether such representations are true or false, or where they have the means of knowing the truth." *Anderson v. Tway*, 143 F. 2d 95, 99 (C. C. A. 6th, 1944.)

Even where a party innocently misrepresents a material fact by mistake or makes the misrepresentation without knowing it to be true or false, or may believe it to be true; or without reasonable grounds for believing it to be true, such misrepresentation will support an action for fraud. *Stein v. Treger*, 182 F. 2d 696, C. A. D. C. 1950: *Grand Trunk Western R. R. Co. v. H. W. Nelson Co.*, 116 F. 2d 823 (C. C. A. 6th, 1941).

Although faud is never presumed, it may be proved by circumstances which will also show the fraudulent intent or purpose for which the party acted. *Connolly v. Gishwiller,* 162 F. 2d 428 (C. A. 7th, 1947; cert. denied 332 U. S. 825). All the facts and circumstances prove solidly that appellant intended to deceive the Government.

> "The inferences to be gathered from a chain of circumstances depend largely upon the common sense knowledge of the motives and intentions of men in like circumstances." (*Connolly v. Gishwiller, supra,* at page 433.)

The appellant's error is that he did not disclose information to the Government that it was entitled to know. Appellant's reaction to the detection of his fraud by the Government is to attempt an explanation. This is to be expected in any case where the defendant has committed a wrong. He seeks to show his innocence by attempting to establish no intent, lack of understanding, or ignorance. The court, in *Del Guercio v. Pupko, supra,* in commenting on the defendant's efforts to explain away her false statements said:

> "Her professed purpose was, not to make a disclosure of the incident at some later and supposedly more opportune stage, but merely to attempt an explanation in the event the Service should chance to stumble upon the truth. There is nothing unique in such a motive; doubtless much the same idea animates every aspirant for citizenship who gives an untruthful answer to a material inquiry. Should the courts condone these deceitful practices the whole procedure preliminary to naturalization would be effectively undermined and the declared purpose of Congress frustrated."

In an attempt to further excuse himself, appellant refers to his "limited education" and his "third-grade" education (Appellant's brief, pages 18, 20) and argues that this is proof that he did not intentionally misstate the truth. A study of appellant's testimony, his sparring and evasive tactics with the District Attorney, does not depict a person of little intelligence. Appellant, being of foreign birth, may not speak accurate English but it has no bearing on his intelligence. His repeated "I do not remember" (351a, 352a, 356a, 365a, 378a, 379a, 383a, 385a, 392a, 406a, 409a) to relevant questions relating to his arrests, as contrasted with his ability and willingness to recall events supporting his own cause does not conform to a man of limited intelligence. He recalled what took place at his naturalization proceedings when it aided his cause but conveniently could not recall details relating to his arrests, not even an arrest for murder except in a few instances upon repeated questioning by the District Attorney.

On page 19 of his brief, appellant infers that it is naturalization Examiner White's testimony that the latter is able to recall that he asked appellant about his arrests only because it was the practice to ask such questions. This is not the gist of White's testimony. He testified at the trial only after examination of the Preliminary Form (Exhibit 1) and the Petition for Naturalization (Exhibit 3) and identifying his check marks which were made by him at the time of examination of appellant and which are presumptively correct. He testified that the check marks meant that the questioned appellant concerning the particular items checked (64a, 65a), to determine whether the answers thereon were correct. He explained that the notation "NCR" (abbreviation for No Criminal Record) was made by him and meant that at the examination in 1931 appellant said he had no such record (67a). It was

Naturalization Examiner White's job to examine applicants for citizenship to determine if they possessed the necessary qualifications for citizenship (75a-85a), and by regulations he was required to inquire into the record of arrests in order to determine in what manner said record reflected upon the petitioner's good moral character. In performing his duties he reviewed the preliminary form with the petitioner, and if the answers thereon were correct he checked them (75a-76a). He often supplemented the questions in the form with his own questions (76a, 83a, 84a). The Regulations (Exhibit 3; Rule 1, Subdivision D, Paragraph 2) require that "The questions will be repeated in different form and elaborated until the Examiner is satisfied the person being interrogated fully understands them."

Appellant notes that no explanation was given as to why there was not submitted in the court below the stenographic transcription of the questioning of the appellant by naturalization officials, inferring that such record existed. First of all, there is no evidence that such record existed. A glance at the Rules and Regulations quoted above (Exhibit 3; Rule 1, Subdivision D, Paragraph 2), concerning preliminary examination, sets forth that "The principal purpose of such examination is to obtain information bearing upon the applicant's admissibility to citizenship and the qualification of the witnesses rather than to obtain responses for record purposes."

Naturalization Examiner White did not remember the appellant and no improper motive can be imputed to him. In fact he has not been employed by the Naturalization Service for many years. An examination of White's testimony discloses that he still has a very good recollection of naturalization procedure. The answer "No" to Question 29 on the preliminary form was placed there by ap-

pellant or his agent. White's initials, check marks, and notations were placed on the exhibits over twenty years ago. White's testimony merely interpreted and explained them. Appellant has been unable to point to a single contradiction on the part of White.

The court below stated that "It is apparent to this court from the testimony that defendant went to New York to make his application for citizenship because of his long police record in Detroit" (508a). Appellant argues that there is no basis for this finding (Appellant's brief, page 20). Although such finding was not necessary to the decision of the lower court, it is amply supported by the evidence. Appellant was arrested under an indictment for murder on February 19, 1929, prior to moving to Brooklyn, New York (306a, 35a, 355a). He went to Brooklyn shortly after he was married on June 1, 1929 (323a). Immediately after his arrest on February 19, 1929, for murder and his subsequent discharge he was investigated by the United States Immigration Service on March 15, 1929. Therefore, appellant was well-aware that the United States Immigration and Naturalization Service in Detroit was cognizant of his criminal record in that city. Appellant was well-known to the detectives in the Black Hand Squad Detroit Police Department (263-264a, 279a-280a, 283a, 301a, 313a, 314-317a), which investigated crimes perpertrated between Italians (279a), because of his numerous arrests by that squad. What other inference can be taken "upon common sense knowledge of the motives and intentions of men in like circumstances?" *(Connolly v. Gishwiller, supra)*, when after leaving Detroit and upon applying for citizenship he denied that he had ever been arrested or charged with any offense, when he well knew he had been arrested many times in Detroit; that the Immigration and Naturalization Service was aware of these

arrests; that he had been indicted for criminal offenses, including murder; arraigned in court; that he had executed several sizeable bonds in connection with his arrests (357a, 401a, 422a), (one bond amounting to $10,000 (409a) and another bond amounting to $15,000 (418a, 424a)), except that appellant was seeking to escape his unsavory record in Detroit. It is an inescapable conclusion that he had reason to believe that unfavorable action would have been taken on his Petition for Naturalization in Detroit.

Appellant again, on page 20 of his brief, seeks to imply that the depositions taken in Detroit, in connection with appellant's petition for naturalization, were made on the "recommendation" of the Preliminary Examiner. As pointed out heretofore, the depositions were taken in compliance with a requirement of the law and regulations. They were not taken in connection with any recommendations made by the Preliminary Examiner. Such depositions were routine and required and did not place the Detroit Naturalization office on notice that appellant had an arrest record and that such record should be investigated. The depositions were taken from witnesses named by the appellant, not witnesses procured by the government.

Appellant testified that he filed his petition in New York "when he lived in Michigan" (323a). This statement, if correct, would be further grounds to support cancellation of appellant's citizenship for the reason that the District Court in New York could not have naturalized him if he resided in Michigan. Furthermore, if his residence was in Michigan rather than in New York, he then made false statements in Exhibits 1 and 2, when he stated he resided in Brooklyn. It is submitted that it is not by mistake that appellant testified that he was living in Michigan when he filed his petition in New York, but that it was an unintentional admission on the part of the appellant that his

absence in New York was one of convenience and that Michigan was really his home.

In *U. S. v. Rossini,* 52 F. Supp. 816, cited by appellant on page 21, the court stated that the burden was upon the government to prove fraud. It is conceded that the government must prove fraud by clear, convincing, and unequivocal evidence but once fraud is proven the court has no alternative but to cancel citizenship. This court is not primarily concerned now with what the naturalization court should have decided if it had known all the facts. It is only concerned if the applicant for citizenship by "perjury, misrepresentation, falsification, or concealment" did not disclose information that the government was entitled to know and thereby thwarted proper investigation into his qualification for citizenship. In the *Rossini case* the judge stated that in a denaturalization case it is not material what his opinion is "as to what the finding should have been on the hearing for admission * * *" (52 F. Supp. at 819).

Appellant quotes from a note in *U. S. v. Kessler,* 213 F. 2d 53, C. A. 3, 1954, which quotation states that the court had found *no decision nor were any cases cited where citizenship had been revoked for failure to disclose facts,* the revelation of which would not have justified refusal of citizenship in the first place. It is difficult to know what the court intended by that statement. But if the court meant that before it can denaturalize a person it must first determine whether that person would have been admitted to citizenship in the first place, even if he had told the truth, we respectfully submit that the court is in error as far as denaturalization cases involving *fraud* are concerned. (It is true that in denaturalization cases, where the complaint charges that naturalization was *illegally* procured, that the court must necessarily find that the applicant for citizen-

ship was not eligible or qualified for citizenship in the first place.) We will proceed to cite a few cases which the Court of Appeals, Third Circuit, apparently overlooked.

First of all, in this Circuit is *Charnowola v. U. S., supra,* the Court of Appeals cancelled naturalization of a person who failed to disclose his membership in the Communist Party during the naturalization process. At the denaturalization trial the government proved that the naturalized citizen, Charnowola, had been a member of the Communist Party prior to the ten-year statutory period. While the law prohibits the naturalization of aliens who had been members of a proscribed organization, it excepted any applicant for naturalization who at any time within the period of ten years immediately preceding the filing of his petition for naturalization was not a member of a proscribed group. No proof of Charnowola's Communist Party membership within the statutory period was offered. This court accepted the statement of the lower court that the gist of the action to cancel citizenship for fraud was the false information which the petitioner gave the Naturalization Examiners.

In *U. S. v. Saracino, supra,* (decided by the Third Circuit which has also decided the Kessler case) naturalization was cancelled merely because petitioner had lied about his criminal record. The Court held that this was information that was wrongfully withheld from the Naturalization Examiner and the court made no determination whether Saracino would or would not have been naturalized if the information had been disclosed.

In *U. S. v. Mancini, supra,* this court held in cancelling citizenship for failure to disclose arrest record that this information had a bearing on good moral character and, consequently, a false statement concerning it is grounds for cancellation. No finding was made by the court that

the arrest record if disclosed would have precluded petitioner from citizenship.

In the *Kessler case, supra,* it is to be noted that there is a strong dissent by Circuit Judge McLaughlin (213 F. 2d at 59). In that case Reba Kessler answered "No" to the identical question that appears in Question 29 (Exhibit 1). In fact, she had been arrested seventeen times, which arrests she failed to disclose to the Naturalization officials. The majority opinion delved into the legality of the arrests and held that they were illegal. The dissent strongly opposed this action by the majority court and on the question of materiality of the false statement pointed out that "It is not the matters concealed but the fact of concealment which constituted the fraud for which a suit for denaturalization lies." The dissent further pointed out, contrary to the statement in the note in the majority opinion, that the cases hold that a false answer in a naturalization proceeding is sufficient ground for denaturalization, "irrespective of whether the facts concealed would have been a bar to the grant of citizenship had they been known to the court at the time of naturalization" (213 F. 2d at 61).

The dissent, quoted from *U. S. v. Saracino* above, a decision rendered by the Third Circuit, and referred to *U. S. v. Accardo, supra,* decided by the Third Circuit, which sustained the cancellation of citizenship of Accardo for failing to disclose his arrests and convictions. The dissent stated further concerning the decision in the Accardo case (213 F. 2d at 61):

> "Deciding that the nondisclosures constituted fraud for which revocation would lie the district court said, 'It was defendant's duty to disclose an arrest, as well as a conviction, *in order that the Government might investigate before granting the decree.*'" (Emphasis supplied.)

The dissent cited as further authority for its position, the decision of the Sixth Circuit *Russo v. U. S.*, 127 F. 2d 171, 1942, wherein this court cancelled citizenship on the ground that appellant made wilful false statements; *U. S. v. Goldstein, supra; U. S. v. Marcus, supra; U. S. v. DiBlasi,* 1 F. Supp. 28, D. C. N. J. 1932; and *U. S. v. Etheridge, supra.*

In *Stevens v. U. S., supra,* the Court applied the same rule as in the Charnowola case to false statements about an arrest record. The Court of Appeals, 7th Circuit, held it was immaterial that the false statements concerned arrests outside the five-year statutory period, holding that the concealment of arrests was the only fact the court was concerned with in a denaturalization case for fraud.

In *U. S. v. Anastasio, supra,* the latter was denaturalized for a false statement concerning his criminal record made during the naturalization process. The Court, in effect, held that it was only concerned with whether the question which was answered falsely "was relevant and material to the subject matter of inquiry."

In *Gaglione v. U. S., supra,* the Court convicted the defendant for a false swearing for failing to disclose his arrest record in the naturalization proceedings. See also *Rein v. U. S., supra,* decided by the Third Circuit and quotation therefrom heretofore cited.

In *Brenci v. U. S., supra,* the First Circuit held that a concealment of a conviction whether or not it involved moral turpitude was grounds for cancellation of citizenship. The Court said the only issue was the false statements. The Court was not concerned whether the conviction did or did not involve moral turpitude, and if disclosed, may not have been a basis for denying citizenship in the first place.

In *Cufari v. U. S., supra,* in holding that a false denial of arrests is sufficient to cancel citizenship, stated as follows (217 F. 2d at 408-9):

> "The controlling question here is not whether Cufari's arrests were legal, cf. *United States v. Kessler,* 3 Cir., 1954, 213 F. 2d 53, or the seriousness of the charges laid against him, or the validity of those charges. *It is whether Cufari was asked, either at his preliminary examination or at the hearing in the Superior Court of the Commonwealth of Massachusetts, whether he had ever been arrested and had answered in the negative."* (Emphasis provided.)

The foregoing does not exhaust all the cases on the question of materiality of false statements in a denaturalization suit but it is sufficient to show the court that the majority decision in the *Kessler case* was not accurate, in its note quoted by the appellant. We repeat that in a suit for cancellation of citizenship, based on illegality, the issue is whether or not citizenship should have been granted in the first place, but where the complaint for denaturalization charged fraudulent procurement, it is immaterial whether the fact not disclosed would or would not have prevented naturalization in the first instance (See *Kessler v. U. S., supra,* dissent 213 F. 2d at 62).

The court below found that appellant lied when he stated in his preliminary application and also to the Naturalization Examiner that he had never been arrested or charged with any offenses. The burden was on the appellant at the time he filed his petition for naturalization to show that he was a person of good moral character, attached to the Constitution and well disposed to the good order and happiness of the United States during the period required by law. The Government was entitled to inquire in connection therewith into petitioner's conduct prior to the statutory period,

as well as during the period. The Government was entitled to know if the petitioner was ever arrested or charged with any offenses, and if so, to conduct an appropriate investigation before making a determination whether he was a person of good moral character, etc. during the required period (*Sweet v. U. S., supra*).

The finding of fact by the District Court of appellant's fraudulent procurement of naturalization was supported by substantial evidence, and the conclusions of law were based upon logically correct reasoning supported by highest authority and not clearly erroneous.

QUESTION II

IS INTRINSIC FRAUD A BASIS FOR DENATURALIZATION?

The Court below answered "Yes".
The Appellee contends that the answer should be "Yes."
The Appellant contends that the answer should be "No".

A false or fraudulent statement concerning a material fact, or the concealment of a material fact, is ground for revocation of naturalization previously granted. The appellant once more ignores the definition of fraud in a naturalization proceeding as defined by the Supreme Court in *Knauer v. U. S., supra,* as connoting "perjury, falsification, concealment, misrepresentation." It would be surplusage to recite at this point the numerous authorities which have held contra to appellant's contention. This court has recently ruled on this issue in *Sweet v. U. S.,* 211 F. 2d 118, and quoting the *Knauer case* held:

> "That fraud as a statutory ground for denaturalization need not be extrinsic."

QUESTION III

WAS ILLEGAL PROCUREMENT OF NATURALIZATION ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE?

The Court below answered "Yes".
The Appellee contends that the answer should be "Yes."
The Appellant contends that the answer should be "No".

Good moral character is a jurisdictional prerequisite to a grant of citizenship. The Fourth Subdivision of Section Four of the Act of June 29, 1906, as amended by the Act of March 2, 1929 (45 Stat. 1513) provides that:

> "*No alien shall be admitted to citizenship* unless • • • during all the periods referred to in this subdivision he has behaved as a person of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States." (Emphasis provided.)

Consequently, if the appellant during the five-year period prior to the date of his petition for naturalization did not behave as a person of good moral character, etc., he was not eligible for naturalization and if naturalized his citizenship is subject to cancellation (Sec. 338(a) of the Nationality Act of 1940 (8 U. S. C. 738(a)) on the grounds that it was *illegally procured.* Section 301(d) of the Nationality Act (8 U. S. C. 701) provides:

> "A person may be naturalized as a citizen of the United States in the manner and *under the conditions prescribed in this chapter, and not otherwise.*" (Emphasis provided.)

Since being a person of good moral character is a condition precedent to naturalization, if this condition did not

exist in fact, defendant has procured his naturalization illegally.

> "No alien has the slightest right to naturalization unless all statutory requirements are complied with, and every certificate of citizenship must be treated as granted upon condition that the government may challenge it as provided in Section 15 (Act of June 29, 1906, now 8 U. S. C. 738) and demanded cancellation unless issued in accordance with such requirements. If procured when proscribed qualifications have no existence in fact it is illegally procured * * *." (*U. S. v. Ginsberg*, 243 U. S. 472. (Parenthetical insertions provided.) See also *Beaumgartner v. U. S.*, 322 U. S. 565, and *Tutun v. U. S.*, 270 U. S. 568.)

Under facts very similar to the circumstances of this case, the court cancelled citizenship on the grounds of illegality (as well as for fraud) in the case of *United States v. Accardo, supra,* for the reason that the defendant during the statutory period had not been a person of good moral character, etc. On the issue of illegality the court had this to say at 113 F. Supp. page 786:

> "We turn now to the question of illegality, i. e., whether the naturalization certificate was procured illegally, in that the defendant, for two years prior to filing his naturalization petition, and through the time of his obtaining his decree, had not been 'a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States'. First we bear in mind that it was during this period that defendant wilfully concealed from the governmental authority his above arrests and convictions, which obviously had such a material bearing upon the court's determination to grant him his naturalization decree. Those fraudulent acts *per se* revealed his character as that of one willing to

defraud others, even including the Parens Patriae, for his own ends. Since we here consider defendant's character only, defendant's contentions as to the notice to the government as to some of this record becomes irrelevant, even if this contention were not fallacious. It is too clear for argument that the above fraud of itself shows defendant was not then 'of good moral character, attached to the principles of the Constitution, and well disposed to the good order and happiness of the United States.' *Del Guercio v. Pupko*, 9 Cir. 1947, 160 F. 2d 799, 800; *Stevens v. U. S.*, 7 Cir. 1951, 190 F. 2d 880; *Gaglione v. U. S., supra. How can a person claim to be of good moral character or well disposed to the good order and happiness of the United States at the very time he is seeking to defraud the United States in a matter of moment both to him and to the country?*" (Emphasis provided.)

The lower court found by clear, unequivocal, and convincing evidence that the appellant had committed a fraud on the government. It is respectfully submitted that logic would require a finding that the appellant was not a person of good moral character. This finding of fact to-wit: "that appellant was not a person of good moral character", was based upon substantial evidence and is not clearly erroneous hence the appellant's denaturalization should be affirmed on the basis of illegal procurement.

QUESTION IV

WAS THE NATURALIZATION JUDGMENT RES JUDICATA?

The Court below answered "No".
The Appellee contends that the answer should be "No".
The Appellant contends that the answer should be "Yes".

Once again we are confronted with an argument raised by the appellant that has recently been decided by this circuit in the cases of *Sweet v. U. S., Chomiak v. U. S.*, and *Charnowola v. U. S., supra.* In the *Sweet* and *Charnowola* cases this court allowed the government an independent opportunity to inquire into the naturalization of the defendants and to prove that their citizenship had been procured by fraud. This court likewise ruled in the *Chomiak* case that a determination of citizenship by the naturalization court is not *res judicata* where it is illegally procured. Previously discussed in this brief is the fact that naturalization is *ex parte* in nature. The facts in the instant case show that there was never a judicial finding of good moral character. It was not an adversary proceeding. The underlying principle of *res judicata* requires that the parties have their day in court. Under the statutes and decided cases, a certificate of naturalization is subject to revocation in a denaturalization proceeding and is not barred by the doctrine of *res judicata.*

CONCLUSION

Upon this Court, as well as all the other Naturalization Courts throughout this country, lies the responsibility of maintaining the high naturalization standards established by Congress. Congress provided that candidates for naturalization shall possess certain prerequisites at the time of application for citizenship or they shall be denied admission to citizenship. The duty of determining whether petitioners qualify for citizenship is with the courts—with great reliance placed upon Naturalization Examiners. The courts must of necessity, because of the hundreds of applications for citizenship, frequently rely entirely upon the recommendations of the Naturalization Examiner. The latter in turn depends primarily and principally upon representations and disclosures made by the petitioner. Inasmuch as considerable faith is placed upon the petitioner to speak truthfully and with candor, when he breaches that trust, the courts do not hesitate to rectify the damage. Any other course would invite a scandalous naturalization condition that existed prior to the passage by Congress of the basic naturalization law in 1906, which law also warned that any naturalization procured in noncompliance with the law or by fraud would be subject to revocation.

The Naturalization Examiner relying on the truthfulness of defendant's statements recommended to the United States District Court in Brooklyn that defendant be naturalized. The Court, accepting that recommendation, without further examination of the petitioner, admitted him to citizenship. The defendant, by falsely stating that he had never been arrested or charged with any offenses, knowingly misled the Naturalization Examiner and the Court

and precluded an examination into his good moral character. Such action, a deceit and fraud upon the Court, did not exemplify the behavior of a person worthy of naturalization.

A statement by petitioner that he had never been arrested or charged with any offense is evidence to support his claim that he is a person of good moral character. A record of arrest challenges or may completely disqualify the petitioner as a person of good moral character or as a person well-disposed toward the good order and happiness of the United States. It is submitted that the record of arrests in defendant's case portrays him as lacking in good moral character and not well disposed toward the good order and happiness of the United States.

To permit defendant to retain his citizenship after a finding by the Court that he had lied concerning his criminal record in the process of obtaining his enfranchisement would be rewarding him for a fraud upon the Court. It would violate the high standards for naturalization prescribed by Congress.

The Court has found that the defendant was not truthful during the naturalization proceedings. It is urged that defendant's false statements were a fraud upon the court justifying cancellation of his citizenship on the grounds of fraud and illegality.

RELIEF

Wherefore, the appellee prays that the judgment below be affirmed.

Respectfully submitted,

FRED W. KAESS,
United States Attorney,

By DWIGHT K. HAMBORSKY,
Assistant U. S. Attorney, and

JOSEPH SURECK,
U. S. Immigration and Naturalization Service,
Detroit, Michigan,
Attorneys for Appellee.

APPENDIX

TRANSCRIPT OF MOTION TO RE-OPEN PROOFS

Transcript of proceedings in the above cause on motion to re-open proofs before Hon. Frank A. Picard, District Judge, at Detroit, Michigan, on Monday, February 8, 1954.

Appearances: Dwight K. Hamborsky, Assistant United States Attorney, appearing on behalf of the United States; I. A. Cappizi, 2329 National Bank Bldg., Detroit 26, Michigan, and appearing on behalf of the defendant.

PROCEEDINGS

Detroit, Michigan.
Monday, February 8, 1954.
11:00 o'clock A. M.

Mr. Capizzi: Your Honor, the defendant has filed a motion to re-open the defense to permit him to introduce testimony as to conditions which existed around the court house with reference to persons advertising to assist in the filling out of applications for citizenship at the time Mr. Corrado made his application.

Now, the reason we are asking for it at this time is this: At the conclusion of the case, the defense counsel definitely got the impression from something the court said that the court possibly disbelieved Corrado's statement that when he made application, when he went to the court building and obtained the application form and he looked at it and couldn't—realized he couldn't fill it out himself, and as he walked out he saw some of these places across the street which advertised assistance in the filling out of such papers.

We inquired. We found some of those places not only did exist but they still exist today, and we attached to our motion photostatic copies of photographs recently taken of these places just one block from the court house which advertise assistance in filling out citizenship applications.

We have approximately twelve affidavits from lawyers, most of them lawyers who practiced at that time, at the time Corrado made application, from newspapermen, from policemen, who all attest to the fact that these places which still exist today existed then, at that time.

Now, I asked counsel if they would stipulate, because if that is a fact, why put us to the expense. If the court should grant our motion, I think we could work out something to prevent a great deal of expense to the government and in taking depositions. We can possibly stipulate that those are the facts or were the facts at the time, after they have made investigation.

That is all we are asking at this time, is the opportunity to present such proof, either in the form of a stipulation or depositions from some of these witnesses over there.

The Court: What is the position of the Government?

Mr. Hamborsky: The position of the Government is simply this: That this is a very insignificant part to the whole Government's case. It is immaterial. And that the case should not be re-opened for proofs on this point.

The Court: I think it is a very important point. But when he says that the court intimated he did not believe the defendant he was putting it mildly. I told him I did not believe him, just as strongly as I could.

He said that he went into one of these places and he told the man that he had been arrested a couple of times, but for some unknown reason the man did not put it down. And that seemed to so far-fetched to me that I told him that I did not believe his story.

If his story is true—if his story is true or if it helps to raise a doubt as to whether the evidence on the side of the Government is clear and convincing—and I think that is the language of the Supreme Court—that might be very important to this man.

Mr. Cappizzi: Your Honor, I—

The Court (interposing): There is another point, however, and that is the court permitted the defendant to choose whether evidence could be introduced to show what kind of an American citizen he had been following 1931. Do you remember that, Mr. Hamborsky?

Mr. Hamborsky: Yes, sir.

The Court: I think that the Government should have the right to put in that. It has been done in other cases. Of course, now, here is a man that gets his citizenship in 1931. It should be, in my opinion—it should be, "What was the situation at that time", and not after 1931, but the courts have permitted that evidence to be shown.

Mr. Hamborsky: Well—

The Court (interposing): I would like to, if I was going to open this at all, I would like to not only permit the defendant to show that there was such a place over there in—where was it? Buffalo, New York?

Mr. Cappizzi: New York City; Brooklyn.

The Court: Brooklyn?

Mr. Capizzi: Brooklyn, New York. Yes, your Honor.

The Court: So I think we ought to take the testimony on that other, too. What kind of a citizen was this man since 1931; that might bear upon whether or not he was telling the truth or whether he is telling the truth now, as to whether or not he had told them about his arrests. Of course, the Government's case is weak in this, that the only arrests that they have got against this man—the only actual arrests were two, and I guess they let him out on both of them. Of course, he claims he doesn't remember them, but he put up a big bond and had some of the best lawyers in the city at that time defend him, and finally the court threw it out. I just can't understand that. What do you think about the other? Do you think you might want to change your mind on that? I might want to, anyway.

Mr. Capizzi: Well, I would like to talk to my colleague.

The Court: All right.

Mr. Cappizzi: Who is not handy this morning.

The Court: I have your position and I will rule on it, but I would like to have you—I might permit the Government to come in and to show what kind of a citizen he was after '31.

Now, I think that you and your colleague—this is my deduction and doesn't mean anything—I think that you and your colleague did not want to show what kind of a citizen he was after '31 because if I should take his citizenship papers away that didn't mean he would be deported, but that if the Government was able to show what kind of a citizen he was after 1931, and it wasn't good, that then the chances would be he would be deported. That may be the reason. I don't know. I don't ask you to tell me under the Fifth Amendment. You can take advantage of that, Mr. Capizzi.

I will think that over. I am inclined to give him a chance, because to take a man's citizenship papers away from him is pretty serious.

Mr. Hamborsky: However, I would like to point out this, your Honor. It is my understanding from Mr. Capizzi's motion that this testimony of Mr. Corrado as to what he told the examiner is not being raised to be re-opened at this time.

Mr. Capizzi: Oh, no.

Mr. Hamborsky: The only thing that is being raised at this time is whether or not there was actually these various places that serviced this citizenship application across the street from the Brooklyn Court House.

The Court: I know it. But up to this time you haven't got any evidence at all to show that there were such places. You see that?

I know they are down here, right across the street. There are any number of them. I don't know what difference it makes.

(Mr. Sureck entered the room at this point.)

The Court (continuing): But I want to give this man a chance to put in every bit of testimony he can. Now, I might be governed somewhat by the other. It is within the discretion of the court. But when you take a man's citizenship papers away, you have to have clear and convincing evidence.

And if I immediately shut out all of their chance of proving that, I don't know as I have been exactly fair.

Here comes your associate. You had better sit over there in the corner and talk it over with him.

(Mr. Kobel entered the room at this point.)

Mr. Kobel: Sorry, you Honor. I was up in Judge Levin's court.

The Court: All right. Talk it over. May I suggest this, also—where are they?

The Clerk: In the hall.

The Court: Mr. Kaess, you tell them this: It would materially help their case if they were able to find out whether this man that signed this paper for him, or helped him make it out, was—what his name was, because you know the mysterious stranger, to me, is always a very illusive person in any lawsuit.

The first lawsuit I ever tried was a criminal case. I was assigned to it by the court. You may take this off the record.

(Discussion off the record.)

(Short intermission.)

The Court: What have you decided?

Mr. Capizzi: We have decided to limit it merely to this one phase that we set forth in our motion.

The Court: Suppose I would say anyway to open it. Is there any case you have got that tells me I can't make inquiry after July—what is the date? After 1931?

Mr. Hamborsky: After 1931.

Mr. Kobel: Well, the cases in which this arose, your Honor, came about as the result of the investigations into Communists and Nazi affairs, and those cases, Schneiderman, Baumgartner, and so on, dealt with another phase of denaturalization, the oath of allegiance and their willingness to take the oath to the United States with mental reservations.

The Court: Will you do this: Will you give me the citations that you depend upon to substantiate your position that I should not make inquiry after 1931. Give it to my law clerk. I don't want you to write a brief, unless you want to. I don't think you want to now. And will

you also look into that, Mr. Hamborsky, because I am inclined to inquire into that phase if I open this investigation or this case for more testimony. I believe you would be entitled to that, which would make the other more easy.

I tell you now, if you agree to that, I think that is important enough so I might say, "While we are opening the matter, I will take in the other, too."

Mr. Hamborsky: Well, let me say this: That if the defendants in this matter are opening it for the purpose for which they filed the motion, and no other evidence, I will say on the reopening of the proofs the government is content to rest on what is in the record. If they are opening it for other purposes—

Mr. Capizzi (interposing): No, no.

The Court: Well, I haven't read it yet. I don't know what it is.

Mr. Capizzi: The only purpose—that is the only purpose.

Mr. Hamborsky: I say, if that is the only purpose, then the Government is content to rest on the record.

Mr. Capizzi: That is definitely the only purpose.

The Court: Then you don't ask to have the other, to meet the information that is contained in the motion?

Mr. Hamborsky: Yes. Here is what I would like, your Honor. This is the status of the matter at the present time. It is my understanding a week from today Mr. Kobel will file his reply brief to the Government's brief.

The Court: Haven't you filed that yet?

Mr. Kobel: No. I was—I saw your Honor last Monday on it.

The Court: You waved at me last Monday, but I didn't take that as a motion.

Mr. Kobel: You gave me two weeks to file a reply brief. As a matter of fact, it is beeing typed right now.

Mr. Hamborsky: And then, as I understand it, the Government has five days to answer the reply brief.

The Court: All right.

Mr. Hamborsky: Now, of course, what I would like to suggest—

The Court (interposing): I will hold this in abeyance, temporarily, anyway. The longer this case takes, as far as the defendant in this case—he is not in jail?

Mr. Kobel: No, sir.

Mr. Capizzi: No, your Honor.

The Court: He won't be antagonistic to any delay.

Mr. Kobel: No.

The Court: All right. All right. I would like to get all the information I can. I don't want to do him an injustice, and at the same time I felt pretty strongly on this other point. I didn't believe it at all. This doesn't make me believe it, but it helps your case. I haven't looked at it, incidentally, I don't know what it says.

Mr. Kobel: You want us to submit the affidavits?

Mr. Capizzi: May we file some affidavits in support of the motion?

The Court: Yes. Put them all in together.

Mr. Kobel: All right.

State of Michigan,
County of Wayne—ss.

I, Donald B. Severance, do hereby certify that I reported in shorthand the proceedings in the above entitled cause before Hon. Frank A. Picard, District Judge, at Detroit, Michigan, on Monday, February 8, 1954, and that the foregoing transcript, consisting of twelve typewritten pages, is a true, full and accurate record of said proceedings.

Donald B. Severance,
Official Court Reporter,
707 Federal Building.
Detroit 26, Michigan.

Dated: May 2, 1955.

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 784

PETER CORRADO, A/K/A PIETRO CORRADO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. 25–33; R. 525–530) is reported at 227 F. 2d 780. The opinion of the district court (Pet. App. 15–23; R. 499–508) is reported at 121 F. Supp. 75.

JURISDICTION

The judgment of the Court of Appeals (Pet. App. 33; R. 523) was rendered on December 16, 1955. By order of Mr. Justice Reed, the time for filing the petition for a writ of certiorari was extended to April 14, 1956 and the petition for a writ of certiorari was filed on March 22, 1956.

The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether the court properly set aside a certificate of naturalization for fraud where the applicant, who filed his petition in New York, concealed from the immigration authorities numerous arrests and two convictions for misdemeanors in Michigan prior to the naturalization proceedings.

STATUTES INVOLVED

The Naturalization Act of June 29, 1906, 34 Stat. 598, as amended by the act of March 2, 1929, Chap. 536, Section 6 (b), 45 Stat. 1513 [in effect when petitioner was naturalized in 1931], provided:

> Fourth. No alien shall be admitted to citizenship unless * * * (3) during all the periods referred to in this subdivision he has behaved as a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. * * *

Section 338 (a) of the Nationality Act of 1940, 54 Stat. 1158 (8 U. S. C. (1946 ed.) 738 (a)) provided:

> It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section

301 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were illegally procured.

STATEMENT

Petitioner was admitted to United States citizenship by a decree entered by the United States District Court of the Eastern District of New York on August 18, 1931 (R. 4). On November 28, 1952, the United States Attorney filed a complaint in the District Court of the United States for the Eastern District of Michigan, alleging that such citizenship had been illegally and fraudulently procured and praying that the decree of naturalization be set aside (R. 3–6). The district court entered a judgement setting aside the 1931 decree which had made petitioner a citizen (R. 509–510), for reasons fully set forth in a lengthy opinion (R. 499–508; 121 F. Supp. 75). The Court of Appeals affirmed (R. 523).

The facts found by both the district court and the Court of Appeals are as follows:

After his arrival in the United States in 1921, petitioner, a native of Italy, lived in Detroit, Michigan, until June 1, 1929. At that time he moved to New York City where he lived until

shortly after August 18, 1931, the date of his naturalization (R. 321–325).

In June 1929, petitioner filed an Application for a Certificate of Arrival and Preliminary Form for Petition for Citizenship in New York City (Gov. Ex. No. 1, R. 478–480; R. 47–48). The application was signed by him, but the answers were not in his handwriting (R. 42–43, 53). Question #29 of this Form asked (R. 479):

> Have you ever been arrested or charged with violation of any law of the United States or State or any city ordinance or traffic regulation? If so, give particulars.

In response thereto petitioner stated: "No". At the conclusion of the form was a certification which petitioner signed that the facts given in the application were true (Gov. Ex. No. 1, R. 479, 480). Thereafter on May 18, 1931, he filed his petition for naturalization (Gov. Ex. No. 2, R. 483), and was naturalized on August 18, 1931 (R. 4). Immediately thereafter he returned to Detroit where he is presently residing (R. 321–325, 356; Gov. Ex. No. 1, R. 478).

At the time petitioner filed his petition for naturalization in 1931, he had had two convictions for misdemeanors, one on June 25, 1923 for disturbing the peace (R. 94, 142, 488) and one in August 1927 for frequenting a gambling place (R. 143, 488). He also had numerous arrests as follows:

Date	Charge	Result	Record
3/13/24	Murder	Dismissed on writ	(R. 154, 201)
3/24/24	Felonious assault	Dismissed	(R. 142)
7/20/24	Armed robbery	Dismissed	(R. 234, 497)
9/25/24	Armed robbery	Dismissed	(R. 229-230)
11/7/24	Investigation	Released on bail; bail forfeited—no disposition.	(R. 488, 491, 496)
1/13/25	Armed robbery	Dismissed	(R. 497)
1/16/25	Violation of Dyer Act	Turned over to U. S. Marshal	(R. 142)
4/28/25	Armed robbery	Dismissed	(R. 232, 280-281)
8/6/25	Armed robbery	Dismissed	(R. 142, 281)
3/30/26	Carrying concealed weapon.	Discharged	(R. 142)
4/13/27	Carrying concealed weapon.	Discharged	(R. 143)
2/19/29	Murder	Discharged, subsequently indictment returned 3/24/31; nolle prosed.	(R. 143,[1] 189, 309-312, 354, 355)

[1] After petitioner's return to Detroit in 1931 and subsequent to his naturalization, he was arrested on October 28, 1931 on the 1929 murder charge and on December 10, 1931, as a fugitive (R. 143-144, 312, 498). The charge was eventually dropped (R. 312-313).

At the denaturalization hearing, United States naturalization examiner White, who had worked in that capacity in New York City from 1929 to 1933, testified that he had no independent recollection of examining petitioner as to the application and petition for citizenship, but that his handwriting on the application indicated that he had examined petitioner on May 18, 1931; that the check marks thereon indicated that he questioned petitioner about the general subject matter involved; that he placed the designations "NCR" and "RE" on the petition for naturalization, the latter indicating that petitioner could read English and the former indicating that petitioner told him on examination that he had no criminal record. Mr. White also indicated on the form that depositions had to be taken in Michigan (R.

59–67; Gov. Ex. No. 2, 483–484).[1] The final examination was conducted by another examiner who is now deceased (R. 175, 177).

Petitioner testified that he hired persons in the business near the courthouse to prepare his forms because "it was too deep for" him (R. 429, 430). The person who assisted him in the preparation of the form asked him the questions thereon before he filled them in. When that person asked him about question # 29 concerning arrests and convictions, petitioner said the following occurred (R. 431):

> So I told him, I said, "I was arrested for investigation, and I pay a fine of $25, fine for disturbing the peace."
>
> So he told me, he said, "Well, that is $25 fine for disturbing the peace. That is nothing. That is misdemeanor." He said, "The others—did you ever serve time for anything?"
>
> I said, "No."
>
> Well, he said, "That is all. As long as you didn't serve no time, that is not necessary."

Petitioner said that when he appeared before Mr. White and subsequently before the examiner who made the recommendation, they did not ask him any questions, except that Mr. White merely asked him if everything in the application was true and petitioner said "Yes" (R. 434–437).

---

[1] The proceedings do not indicate the result of such depositions.

The trial court refused to credit petitioner's testimony (Pet. 19) and concluded that petitioner "deliberately falsified his position with the intent of misleading the examiner", that the false statements were material, and that the government had relied upon them (Pet. 19).

ARGUMENT

1. Petitioner's basic contention is that his concealment of his arrests does not establish fraud because, having been convicted only of minor misdemeanors, he might have been admitted to citizenship despite the arrest record. It is clear, however, that an arrest record such as petitioner's, which included an arrest for a murder which was the subject of a recent indictment not yet disposed of, was a material fact of which the immigration authorities should rightly have been informed. The investigation of a person with such a record in a district other than that of naturalization would obviously have been very different from the investigation of a person such as petitioner represented himself to be, *i. e.* a person with no arrests at all. The result of an investigation on the true facts might well have resulted in denial of citizenship and, at the very least, would have resulted in postponement pending disposition of the murder charge. The case on the fraud aspect is strikingly similar to *United States* v. *Accardo,* 113 F. Supp. 783 (D. N. J.), affirmed, 208 F. 2d 632 (C. A. 3), certiorari denied, 347 U. S. 952, except that

here petitioner's arrest record was longer and the charges more serious.

As the *Accardo* decision illustrates, there is nothing novel in the ruling of the court below that the issue on fraud is not whether citizenship would ultimately have been granted, but whether an applicant lied "concerning a material fact which, if revealed, might have prevented his acquisition of citizenship" (Pet. App. 31). In addition to the *Accardo* decision, numerous other courts have held concealment of arrests, convictions, and the like to be adequate grounds for denaturalization for fraud. *Brenci* v. *United States*, 175 F. 2d 90 (C. A. 1); *United States* v. *Ascher*, 147 F. 2d 544 (C. A. 2), certiorari denied, 325 U. S. 884; *United States* v. *DeFrancis*, 50 F. 2d 497 (C. A. D. C.); *United States* v. *Saracino*, 43 F. 2d 76 (C. A. 3); *United States* v. *Etheridge*, 41 F. 2d 762 (D. Ore.). Although, in this connection, the court below said that "it is not required that the Government in a denaturalization proceeding should meet the standard necessary for conviction in a criminal case" (Pet. App. 31), actually, the standard which a criminal case requires was met in this case. In crimes involving fraud, such as conspiracy to defraud or mail fraud, it is not necessary to show that anyone was actually defrauded; it is enough that a defendant have the intent to defraud and takes action to put his intent into effect. See *United States* v. *Comyns*, 248 U. S. 349; *Durland* v. *United States*, 161

U. S. 306; *Fournier* v. *United States*, 58 F. 2d 3 (C. A. 7).

2. There is thus nothing in the decision below which departs from the rule that fraud in the procurement of naturalization must be proved by "clear, unequivocal and convincing evidence", as required by this Court in *Baumgartner* v. *United States*, 322 U. S. 665, and *Schneiderman* v. *United States*, 320 U. S. 118. The concealment of the record was thoroughly proved. The materiality of that record was clear. Nothing in the decisions of this Court prevents a court from discrediting the testimony of an interested witness whose demeanor the trial court found to be evasive (see Pet. App. 18). The evidence in this case meets the standards fixed by this Court which were fully applied by the courts below.

3. Petitioner's attack (Pet. 9–10) upon the denaturalization decree, which was based on failure to reveal arrests and convictions, as involving intrinsic fraud and hence being improperly granted under Section 338 (a) of the Nationality Act of 1940 (*supra*, pp. 2–3) is without substance. The type of fraud here proved is ground for denaturalization, whether it be denominated intrinsic or extrinsic. As this Court said in *Knauer* v. *United States*, 328 U. S. 654, 671–673:

> * * * [W]e need not consider in this case what the historic powers of equity might be in this situation. For Congress has provided that fraud is a basis for cancellation of certificates of naturalization in pro-

> ceedings instituted by the United States. The legislative history of that enactment shows that false swearing was one of the evils included in the statutory grounds for denaturalization. That power was granted to give added protection against fraud committed on the naturalization courts. * * * *Though the making of a false oath be called intrinsic fraud* (see *United States* v. *Throckmorton*, [98 U. S. 61]), *it is within the reach of the statute.* [Emphasis supplied.]

Any other result would defeat the purpose of the denaturalization statute which is not limited in its literal application to any special class of fraud. See *Bindczyck* v. *Finucane*, 342 U. S. 76; *United States* v. *Ness*, 245 U. S. 319, 325; *United States* v. *Siegel*, 152 F. 2d 614 (C. A. 2), certiorari denied, 328 U. S. 868. Fraud in concealing arrests immediately prior to naturalization is particularly analogous to the fraud in the oath of allegiance involved in *Knauer*, for here, as in that case, there was no real opportunity for the naturalization authorities or the court to examine into the fraud.

4. Petitioner urges (Pet. 10–12) that the doctrine of *res judicata* applies to the denaturalization judgment in that the issue of petitioner's good moral character was adjudicated in the naturalization proceeding.

Since the findings of fraud are fully supported, there is no occasion in this case to reach the issue

raised by petitioner as to the finding that the decree was also subject to cancellation for illegality in that petitioner had not in fact been a person of good moral character during the years preceding naturalization (R. 506–507). It may be noted, however, that in *United States* v. *Ness*, 245 U. S. 319, this Court held that a certificate of naturalization could be set aside as illegally entered, even though the government had entered an appearance and raised the very objection later presented as grounds for denaturalization. It held that Sections 11 and 15 of the Act of June 29, 1906 (34 Stat. 596), which were embodied in 8 U. S. C. (1946 ed.) 734 (d) and 738 (a), "were designed to afford cumulative protection against fraudulent or illegal naturalization" (245 U. S. at 327). See also *Bindczyck* v. *Finucane, supra; Maney* v. *United States*, 278 U. S. 17; *Baumgartner* v. *United States*, 322 U. S. 665, 675. In arguing that the decree of naturalization is *res judicata* on the issue of good moral character, petitioner relies on cases where the denaturalization courts have refused to relitigate a question which had actually been in issue before and determined by the naturalization court. *United States* v. *Sakharam Ganesh Pandit*, 15 F. 2d 285 (C. A. 9); *United States* v. *Bischof*, 48 F. 2d 538 (C. A. 2). This is not the situation here for petitioner's concealment of his prior convictions and arrests—the facts on which the finding that he was not in fact a person of

good moral character rests—were not before or determined by the naturalization court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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